

THE TOBACCO INSTITUTE

1875 I STREET NORTHWEST
WASHINGTON, DC 20006
202/457-4800 • 800/424-9876

SAMUEL D. CHILCOTE, JR.
President

December 22, 1993

MEMORANDUM

TO: The Members of the Executive Committee

FROM: Samuel D. Chilcote, Jr. *Sam*

RE: National Environmental Tobacco Smoke Conference

Little new information surfaced during the National Environmental Tobacco Smoke (ETS) Conference in Washington, D.C., on December 16 and 17. The conference, sponsored by IAQ Publications, Inc. (publisher of the monthly Indoor Air Review), provided a forum for government officials, anti-smoking activists and industry representatives to present their positions on topics ranging from ETS legislation and the merits of the ETS science, to management, liability and litigation issues regarding ETS and indoor air quality (IAQ). The conference agenda and list of speakers are enclosed.

Attendance varied from about 50 at the start of the conference to fewer than 20 at the end. Attendees hailed from a range of anti-smoking groups, such as the Groups Against Smoking Pollution (GASP) of New Jersey and Massachusetts, the Coalition on Smoking OR Health and Action on Smoking and Health (ASH); government agencies, including the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA) and Department of Defense; health organizations, such as the National Association of State and Territorial Health Officials; and private industry, including Eastman Kodak and Toyota.

C-SPAN broadcast the afternoon session of December 16, including the session on the tobacco industry's perspective, and rebroadcast it several times over the next day. Reporters from Indoor Air Review and IAQ Update attended both days, and conference organizers said that reporters from Associated Press, CNN and FOX also covered portions of the conference.

During the panel devoted to federal government efforts on ETS, Elissa Feldman of the EPA defended the agency's risk assessment, and claimed that the EPA's data on respiratory effects of ETS in children had not been challenged by the tobacco industry. Michael Eriksen, of the Centers for Disease Control and Prevention's (CDC) Office on Smoking and Health, said CDC's current research efforts are focused on the potential effects of ETS on sudden infant death syndrome, and on measuring ETS exposure in the general public.

2024223897

The Members of the Executive Committee
December 22, 1993
Page Two

Chuck Adkins, OSHA's director of health standards, said that among the questions OSHA was trying to answer before deciding to initiate a rulemaking on ETS or on general IAQ were: whether all potential hazards could be addressed through ventilation; whether American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) standards were appropriate for use in a rulemaking; and whether combining ETS and IAQ standards would delay rulemaking proceedings. Adkins noted that the OSHA rulemaking process typically takes 2-5 years, and that OSHA is seeking a way to "expedite" the process.

Adkins also gave an update on the ASH lawsuit to compel OSHA to issue an emergency temporary standard on workplace smoking. In September, the court had assigned the case to a mediator to try to work out differences between ASH and OSHA. This month, the mediator told the court that the ASH and OSHA positions were too far apart to be mediated, and the lawsuit will move forward.

Representatives of the Coalition on Smoking OR Health reported that they have developed a new rating system for "State-Legislated Action on Tobacco Use" that rates states as having comprehensive, extensive, moderate or minimal legislation on smoking restrictions, excise taxes, sales to minors, and sampling and vending restrictions.

Gregory Whetstone, chief counsel for the environment of Rep. Henry Waxman's Energy & Commerce Subcommittee on Health and the Environment, predicted that H.R. 3434, Waxman's "Smoke-Free Environment Act," would be enacted in the 103rd Congress, and said that Waxman would try to hold a hearing on the bill early in the next congressional session. Sander Lurie, legislative assistant to Sen. Frank Lautenberg (sponsor of the Senate companion to H.R. 3434) was less optimistic about the Senate's passing such a comprehensive bill. Lurie thought that a bill of smaller scope, such as PRO-KIDS or PRO-FEDS, had better prospects of enactment in the 103rd Congress, and predicted that passage of any anti-smoking bill was unlikely until after Congress deals with health care reform and the proposed cigarette excise tax to pay for it.

For the tobacco industry perspective, Institute Vice President Brennan Dawson discussed the need for the media to put the ETS issue in perspective. Dr. Chris Coggins from R.J. Reynolds detailed the industry's criticisms of the science and methods used by the EPA in its risk assessment. Covington & Burling attorney David Remes explained that anti-smokers' claims of greater employer liability as a result of the risk assessment were exaggerated. Robert Meyne, manager of public affairs at

2024223898

The Members of the Executive Committee
December 22, 1993
Page Three

R.J. Reynolds, discussed RJR's accommodation program, contrasting it with the extreme position of anti-smoking advocates.

John Banzhaf, ASH executive director, pronounced that ASH's focus has turned to protecting children from ETS, through child custody cases and lawsuits brought against fast-food restaurants for refusing to ban smoking. ASH's activities were described in greater detail the following day in a presentation by ASH legislative counsel, Kathleen Scheg.

Bill Borwegen of the Service Employees International Union (SEIU) urged OSHA to take a comprehensive approach to indoor air quality in the workplace, but said that a smoking ban should be part of that approach. Borwegen accused the industry of paying scientists to sit on the EPA's Science Advisory Board and then attacking the results of a process it participated in. James Dinegar of the Building Owners and Managers Association International (BOMA), strongly asserted BOMA's position that smoking should be banned in all buildings. BOMA has worked closely with the EPA and Rep. Waxman on anti-smoking initiatives.

Scientist Maurice LeVois discussed problems with the epidemiologic data that the EPA relied on in its risk assessment, focusing on flaws in the spousal smoking study design. Alan Hedge of Cornell University described his research on sick building syndrome (SBS), which showed that there is no relation between the smoking policy in an office and the incidence of SBS symptoms, and that office workers' beliefs about ETS tend to drive their perceptions of SBS symptoms.

John Tiffany of the American Industrial Hygiene Association (AIHA) described the positions of the new Coalition on Regulation of Workplace ETS (CRWETS), which comprises AIHA, the American Association of Occupational Health Nurses and the American College of Occupational and Environmental Medicine. CRWETS sent a letter to Labor Secretary Reich urging OSHA to promulgate an immediate rulemaking on ETS.

Bob Harrington of the National Restaurant Association (NRA) stressed that individual restaurant owners should decide whether to allow smoking in their establishment, and that customer preference should dictate the decision, not government regulation. Harrington cautioned OSHA to move carefully on the workplace smoking issue, and said that if government is going to ban smoking, the ban should be applied everywhere and restaurants should not be singled out. "Restaurants," said Harrington, "should not be vehicles of social change."

2024223899

The Members of the Executive Committee
December 22, 1993
Page Four

The remainder of the conference focused on ETS litigation and liability. Attorney John Fox of Fenwick & West described the current legal climate of smoking in the workplace, predicting that the courts would continue to be hostile to efforts to force a smoke-free workplace and that there would be no increase in court cases in the future. He said that employers can avoid liability problems by properly ventilating and reasonably accommodating nonsmoking employees. Fox also clarified a number of earlier misstatements by Banzhaf and Scheg of ASH.

Lawrence Kirsch, an attorney with Cadwalader, Wickersham & Taft and founder of the Indoor Pollution Law Report, predicted that the future would bring more ETS lawsuits, but questioned how successful they would be. Ed Sweda, attorney for Massachusetts GASP, said that nonsmokers suing to avoid exposure to ETS have won a number of legal cases ranging from workers' compensation and handicap discrimination to child custody and the common law of nuisance. Sweda said there were 130 ETS cases pending around the country.

Victor Schwartz, tort law expert with Crowell & Moring, discussed why it would be difficult for a plaintiff to win an ETS liability case against the tobacco industry. New York attorney Fredric Newman closed the conference by predicting that, while ETS suits may continue to be brought, there probably would not be many victories because -- in addition to not caring as much about ETS as the partisans on either side of the issue -- "jurors don't check their common sense at the door."

Copies of the conference proceedings and handouts are available from my office on request.

SDC:kfs

Enclosures

cc: The Members of the Management Committee
TI Senior Staff

2024223900