

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

C3

PUBLIC PETITION FILED PURSUANT)
TO 29 U.S.C. 651 ET SEQ. AND)
29 C.F.R. §1911.12 FOR AN)
EMERGENCY TEMPORARY STANDARD)
REGULATING ENVIRONMENTAL)
TOBACCO SMOKE)

DOCKET NO. _____

PUBLIC PETITION
BY ACTION ON SMOKING AND HEALTH (ASH)
FOR AN EMERGENCY TEMPORARY STANDARD (ETS)
REGULATING ENVIRONMENTAL TOBACCO SMOKE
IN THE WORKPLACE

ABSTRACT: Although OSHA's determination — that the evidence at the time of ASH's 1987 Petition did not warrant the issuance of an emergency temporary standard relating to Environmental Tobacco Smoke (ETS) in the workplace — was upheld by the U.S. Court of Appeals, ASH respectfully seeks such an emergency temporary standard again, based upon the following changes in circumstances since 1987:

A. The Environmental Protection Agency (EPA), after an extensive outsider-reviewed study, determined the ETS is a Group A carcinogen in the same category as asbestos and benzene, and that it kills at least 3000 Americans each year from lung cancer alone;

B. The National Institute for Occupational Safety and Health (NIOSH) has likewise issued a report concluding the ETS causes lung cancer deaths in nonsmokers, and that smoking in workplaces must either be banned or restricted to separately-ventilated areas;

C. The outgoing U.S. Surgeon General has reported that ETS causes approximately 53,000 deaths among nonsmoking Americans each year from lung cancer, cancer at other sites, and heart attacks;

D. More than 200 new studies and articles on the topic have been published in major scientific and medical journals;

1. these include approximately 24 studies of exposure to ETS at environmental or normal levels not available in 1987, and the type of evidence which has not been available for determining whether or not to classify other substances as Group A carcinogens

2. several major studies linking ETS to heart attacks and to cancer at other sites in addition to the lungs

E. The outgoing Secretary of Labor issued a directive that ETS was so dangerous that OSHA should begin a separate rulemaking proceeding limited to ETS as quickly as possible

F. After several years of dismissing ASH's law suits arguing that OSHA was unreasonably delaying in dealing with ETS in the workplace, the U.S. Court of Appeals has denied OSHA's motion to dismiss ASH's current suit, and ordered the agency to report to it.

RESPECTFULLY SUBMITTED:
July 12, 1993

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TIME LINE SHOWING DELAY BY OSHA IN ACTING ON ENVIRONMENTAL TOBACCO SMOKE (ETS) DESPITE URGENT NEED FOR ACTION

Jul-Aug 1986 Committee on Airline Cabin Air Quality of National Research Council recognizes health risks of ETS and recommends removal from aircraft environment

Sep-Oct 1986

Nov-Dec 1986 Committee on Passive Smoking of National Research Council recognizes role of ETS in lung cancer, other cancers and cardiovascular disease

U.S. Surgeon General's report "The Health Consequences of Involuntary Smoking" comes to the conclusion that ETS is a cause of disease, including lung cancer, in healthy nonsmokers and that the simple separation of smokers and nonsmokers within the same airspace does not eliminate exposure to ETS

Jan-Feb 1987 The U.S. General Services Administration (GSA) issues new regulations designed to provide a "reasonably smoke-free environment" for all federal workers

Mar-Apr 1987

May-Jun 1987 ASH files Citizen Petition asking for an emergency temporary standard banning ETS in the workplace

Jul-Aug 1987

Sep-Oct 1987

Nov-Dec 1987

Jan-Feb 1988

Mar-Apr 1988 Smoking banned on flights of 2 hours or less

May-Jun 1988

Jul-Aug 1988

Sep-Oct 1988

Nov-Dec 1988

Jan-Feb 1989

Mar-Apr 1989

May-Jun 1989 ASH files court action against OSHA to obtain a response to ASH's Petition

EPA advisory recommends control of workplace smoking for health reasons including cancer risks

Jul-Aug 1989

Sep-Oct 1989 OSHA declines to issue an emergency temporary standard banning ETS in workplace

ASH files Petition for Review in U.S. Court of Appeals

Nov-Dec 1989

Jan-Feb 1990 Ban on smoking on most domestic flights takes effect

Mar-Apr 1990
May-Jun 1990
Jul-Aug 1990 OSHA promises to decide by November 30 whether to ban or restrict workplace smoking

Sep-Oct 1990
Nov-Dec 1990 OSHA determines not to initiate non-emergency rulemaking on ETS

Interstate Commerce Commission (ICC), acting on ASH petition, bans smoking on interstate buses

Jan-Feb 1991 ASH files law suits for review of OSHA's refusals to regulate ETS

Mar-Apr 1991
May-Jun 1991 NIOSH reports ETS causes cancer and other health hazards for nonsmokers and recommends isolating smokers in the workplace

Jul-Aug 1991
Sep-Oct 1991 OSHA publishes a Request for Information (RFI) on all indoor air pollutants

Nov-Dec 1991 U.S. Court of Appeals for D.C. Circuit refuses OSHA's request to dismiss ASH's two law suits and issues order requiring OSHA to justify "allegations of unreasonable delay by the agency" in taking action to ban or limit workplace smoking

Jan-Feb 1992 Court holds OSHA's refusals were not "final refusals" and denies ASH's suits but states that ASH may request review if "OSHA unreasonably delays resolution of the matter following receipt of comments"

ASH files Comments in Response to OSHA's Request for Information

ASH files new Petition with OSHA for regulation of workplace smoking in view of the NIOSH and other

medical and scientific studies on the health hazards of ETS

Mar-Apr 1992 ASH files new petition with OSHA for regulation of ETS as potential workplace carcinogen

May-Jun 1992

Jul-Aug 1992 ASH files further updated petition with OSHA for regulation of ETS as potential workplace carcinogen

Sep-Oct 1992 OSHA denies ASH's petition for regulation of ETS as a potential occupational carcinogen

Nov-Dec 1992 ASH sues OSHA for refusing to consider ETS in a separate proceeding, and for OSHA's October 22, 1992, letter denying ASH's petition for regulation of ETS as a carcinogen

Jan-Feb 1993 EPA declares ETS a "group A carcinogen" which kills over 3000 annually from lung cancer alone

Labor Secretary Lynn Martin directs OSHA to begin a separate proceeding for tobacco smoke as soon as possible as it "is one of the most significant matters facing OSHA" and orders OSHA to prepare an emergency temporary standard

Mar-Apr 1993

May-Jun 1993 Court refuses OSHA's request to dismiss ASH's suit, holds that OSHA's denial of ASH's cancer petition is a final reviewable order, and directs OSHA to respond by mid-July

Jul-Aug 1993 ASH files new petition for emergency temporary standard banning ETS in the workplace

TABLE OF ATTACHMENTS

<u>ATTACHMENT NUMBER</u>	<u>PAGE CITED IN PETITION</u>
1. EPA Report, "Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders" (January 8, 1993)	1, 2, 5, 6, 9
2. Statement by then Secretary of Labor Lynn Martin, issued as a U.S. Department of Labor news release, January 14, 1993	2, 15
3. Swoboda, F., "OSHA is told to Proceed on Smoking Rules", Washington Post, January 15, 1993	2
4. Statement to Action on Smoking and Health from President (then Governor) Bill Clinton, June 24, 1992	2
5. Burros, M., "Hillary Clinton's New Home: Broccoli's In, Smoking's Out," New York Times (Feb. 2, 1993)	2
6. ASH Petition to OSHA for permanent regulation of ETS, docketed as No. 991, February 26, 1992	3
7. ASH Petition to OSHA for rulemaking under OSHA's Cancer Policy, docketed as No. 3-1030, March 10, 1992	3
8. ASH Petition to OSHA for regulation of environmental tobacco smoke as a potential occupational carcinogen, July 31, 1992	3, 5, 7-14, 19, 20, 22-27
9. Action on Smoking and Health(ASH) v. Department of Labor, U.S. Court of Appeals for the District of Columbia Circuit, Order dated May 20, 1993	4
10. Statement by then EPA Administrator William K. Reilly, issued as a U.S. Environmental Protection Agency "Environmental News" release, January 7, 1993	6
11. Novello, U.S. Surgeon General Antonia, "Are You Bothered By Other People's Tobacco Smoke?", USA Today (June 11, 1991)	14

12. U.S. Department of Health and Human Services "Vital and Health Statistics" Series 10, No. 184, December 1992 27

13. Excerpt, ASH Special Report: "Involuntary Smoking: The Factual Basis for Action", 1993 27

14. Memorandum from then Secretary of Labor Lynn Martin to Acting Director of OSHA, Dorothy Strunk, "Environmental Tobacco Smoke in the Workplace", January 13, 1993 28