

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA WINSTON-SALEM DIVISION

FLUE-CURED TOBACCO COOPERATIVE STABILIZATION CORPORATION,
THE COUNCIL FOR BURLEY TOBACCO INC., UNIVERSAL LEAF
TOBACCO COMPANY INCORPORATED, PHILIP MORRIS INCORPORATED,
R.J. REYNOLDS TOBACCO COMPANY,
and GALLINS VENDING COMPANY,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and CAROL BROWNER,
Administrator, Environmental Protection Agency,

Defendants.

6:93CV00370

ORDER AND JUDGMENT

OSTEEN, District Judge

For the reasons set forth in the memorandum opinion
entered contemporaneously herewith,

IT IS ORDERED AND ADJUDGED that Plaintiffs' Motion for Partial Summary
Judgment is granted [1171.

IT IS FURTHER ORDERED AND ADJUDGED that Defendants' Cross Motion for
Summary Judgment is denied [1261. The court vacates Chapters 1-6 of and
the Appendices to EPA's <u>Respiratory Health Effects of Passive
Smoking: Lung Cancer and other Disorders, </u>EPA/600/6-90/006F
(December 1992). To ripen its judgment for purposes of appellate review,
pursuant to Federal Rule of Civil Procedure 54(b), the court finds there
is no just reason for delaying entry of judgment.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiffs, Motion for Leave to
File Supplement Pleading under Rule 15(d) is granted (1201.

This the 17th day July, 1998.

[signed William L. Osteen]

United States District Judge

1. SUMMARY AND CONCLUSIONS

1.1. MAJOR CONCLUSIONS

Based on the weight of the available scientific evidence, the U.S. Environmental Protection Agency (EPA) has concluded that the widespread exposure to environmental tobacco smoke (ETS) in the United States presents a serious and substantial public health impact.

In adults:

- ETS is a human lung carcinogen, responsible for approximately 3,000 lung cancer deaths annually in U.S. nonsmokers.

In children:

- ETS exposure is causally associated with an increased risk of lower respiratory tract infections (LRIs) such as bronchitis and pneumonia. This report estimates that 150,000 to 300,000 cases annually in infants and young children up to 18 months of age are attributable to ETS.
- ETS exposure is causally associated with increased prevalence of fluid in the middle ear, symptoms of upper respiratory tract irritation, and a small but significant reduction in lung function.
- ETS exposure is causally associated with additional episodes and increased severity of symptoms in children with asthma. This report estimates that 200,000 to 1,000,000 asthmatic children have their condition worsened by exposure to ETS.
- ETS exposure is a risk factor for new cases of asthma in children who have not previously displayed symptoms.

U.S. ENVIRONMENTAL PROTECTION AGENCY EPA ASSISTANCE AGREEMENT / AMENDMENT PART I - ASSISTANCE NOTIFICATION INFORMATION		1. ASSISTANCE ID NO. CT 901954-01-0	2. LOG NUMBER																																								
		3. DATE OF AWARD	4. MAILING DATE																																								
5. AGREEMENT TYPE Cooperating Agreement <input type="checkbox"/> <input checked="" type="checkbox"/> Grant Agreement <input checked="" type="checkbox"/> Other <input type="checkbox"/>		6. PAYMENT METHOD Direct Payment Request <input type="checkbox"/> Financial Management Center <input checked="" type="checkbox"/> Other <input type="checkbox"/>																																									
7. TYPE OF ACTION NEW PROJECT		8. PAYEE VICE PRESIDENT, GOVT. AFFAIRS BOMA INTERNATIONAL 1201 NEW YORK AVE., N.W., SUITE 300 WASHINGTON, DC 20005																																									
9. RECIPIENT BOMA INTERNATIONAL 1201 NEW YORK AVE., N.W., SUITE 300 WASHINGTON, DC 20005		10. RECIPIENT TYPE NON-PROFIT ORGANIZATION																																									
11. PROJECT MANAGER AND TELEPHONE NO. JAMES DINEGAR BOMA INTERNATIONAL 1201 NEW YORK AVE., N.W., SUITE 300 WASHINGTON, DC 20005		12. ADMINISTERING OFFICE / LAB OAR/HQ																																									
13. ISSUING OFFICE (CITY / STATE) WASHINGTON, DC 20460 Grant Specialist for this project: CAN CLARK (202) 260-9287		14. EPA PROJECT / STATE OFFICER AND TELEPHONE NO. SCOTT BOWLES (825J) OFC ATMOSPHERIC/INDOOR AIR PROGRAMS US ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460 (202) 233-9047																																									
15. EPA CONGRESSIONAL LIAISON & PHONE BARBARA BROOKS, (202) 260-5880		16. STATE APPL ID (if applicable) N/A	17. SCIENCE FIELD 99																																								
18. STATUTORY AUTHORITY Clean Air Act: Sec. 103		19. REGULATORY AUTHORITY 40 CFR PTS 30, 38, 45																																									
20. PROJECT TITLE AND DESCRIPTION IMPROVING THE INDOOR AIR CONDITION-TRAINING SEMINARS. Nationwide series of seminars to assist commercial real estate professionals in improving the quality of indoor air.		21. STEP 2 & 3 & STEP 3 (Only Completed in State Only) a. Treatment Level b. Project Type c. Treatment Problem d. Study Region																																									
22. PROJECT LOCATION (Agency Reported by Recipient) City/Prism: WASHINGTON County: N/A State: DC Congressional District: ALL		23. BUDGET PERIOD 04/17/92 - 04/16/93																																									
24. ASSISTANCE PROGRAM (CFDA Program Title & Title) Clean Air Training		25. TOTAL BUDGET PERIOD COST \$300,850																																									
26. COMMUNITY POPULATION (Only if Construction Grant Only) N/A		27. TOTAL PROJECT PERIOD COST \$300,850																																									
<table border="1"> <thead> <tr> <th>FUNDS</th> <th>FORMER AWARD</th> <th>THIS ACTION</th> <th>AMENDED TOTAL</th> </tr> </thead> <tbody> <tr> <td>28. EPA Annual Year Action</td> <td>30</td> <td>\$142,238</td> <td>\$142,238</td> </tr> <tr> <td>29. EPA - Old Award</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>30. Unexpended Prior Year Balance</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>31. Other Federal Funds</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>32. Recipient Contribution</td> <td>0</td> <td>7,500</td> <td>7,500</td> </tr> <tr> <td>33. State Contribution</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>34. Local Contribution</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>35. Other Contribution</td> <td>0</td> <td>0</td> <td>0</td> </tr> <tr> <td>36. Allowable Project Cost</td> <td>80</td> <td>\$148,738</td> <td>\$148,738</td> </tr> </tbody> </table>				FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL	28. EPA Annual Year Action	30	\$142,238	\$142,238	29. EPA - Old Award	0	0	0	30. Unexpended Prior Year Balance	0	0	0	31. Other Federal Funds	0	0	0	32. Recipient Contribution	0	7,500	7,500	33. State Contribution	0	0	0	34. Local Contribution	0	0	0	35. Other Contribution	0	0	0	36. Allowable Project Cost	80	\$148,738	\$148,738
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37. FISCAL Program Element: 01 BYGA2H FY: 82 Appropriation: 6:2/00108 Div. Control No.: BE0043 Account Number: 28YG58D005 Obj of Class: 41.21 Obligation / Disposition: \$142,238																																											

EPA Form 1796-001 (Rev. 10/81) to be filled out by the recipient and EPA Form 1796-0A, B, C, and D, all of which are identical.

POTOMAC CURRENTS

BIWEEKLY NEWSLETTER OF THE GOVERNMENT AFFAIRS DIVISION

Volume 4 Issue

April 1, 1994

OSHA'S INDOOR AIR PLAN COMES OUT SMOKING

Media coverage of OSHA's soon-to-be released proposal on indoor air quality was overshadowed by one aspect: a regulatory ban on smoking in the workplace. While BOMA has vocally supported such an approach, OSHA's plan goes much, much further in attempting to address the issue of indoor air quality. They look to regulate the management of buildings in terms of record-keeping requirements, training rules, humidity and carbon dioxide levels, system operation hours, complaint logs, and the creation and adherence to IAQ management plans.

①

All this, and still the problem will remain -- until indoor air contaminants are attacked at the source. So, this \$8.1 billion plan would miss the mark - and BOMA is leading the effort to have them focus on the true target: Source control. Secretary of Labor Robert Reich called poor indoor air quality "a threat to millions of American workers" - and the media continues to play that angle. BOMA calls indoor air quality a "threat to become the asbestos of the 90s" and work must be done to make certain that nightmare is never repeated.

②

Comment: OSHA's move is a proposal, not yet a regulation. This process will take months, but we have 90 days to provide our formal response -- our best chance to argue our case. OSHA looks to have BOMA members held responsible for management of the air quality, without recognizing that many factors contribute to poor conditions, including possible sources such as carpets, furnishings, copiers, laser printers, cleaning agents, tenants, design flaws and yes, poor maintenance at times.

③

Where's the research and the science? Who's to say, with impunity, what the safe levels of contaminants are? How are we to believe we won't be spinning our wheels chasing after this issue, as we did on asbestos? BOMA will continue to push for sound science and guidance to ward off premature regulations.

Want to help? (You have to help - we need your help!) Get involved with our IAQ Task Force and help us craft a formidable response. Make a contribution to the Industry Defense Fund, because we're going to need all the resources we can muster. Stay informed, because you are the target.

ON TOP OF OLD SMOKEY

Second-hand smoke is a major topic of discussion on Capitol Hill, with action pending on everything ranging from a hefty tax, to nicotine's possible treatment as a drug, to a total ban on smoking in the workplace. BOMA has actively supported the call for a smoking ban through postcard and letter writing campaigns, numerous meetings, intensive media outreach and Congressional hearings.

④



Any questions? Call Jim Dinegar, Mike Jawer or Karen Penafiel at (202) 408-2684.

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-- Page Two Continues From Front --

Chip Julin, BOMA International's First Vice President, presented our concerns by testifying before the key Congressional subcommittee. Business and industry representatives supporting the proposed ban addressed Congress with their practical and necessary concerns. Chip found himself subject to intense debate with Congressional officials closely tied to the tobacco companies. They were obstinate and antagonistic in their queries. Chip was direct and unwavering in his response. (You really should have been there!)

BOMA's support of this ban is directly related to efforts aimed at preventing indoor air quality regulations -- and that is a real threat this year. OSHA has issued a detailed proposal (see related story) and the pressure is intensifying. BOMA maintains that indoor air problems are best addressed at the source by eliminating or reducing contaminants. Second-hand smoke, as classified by the U.S. EPA, is a Class A carcinogen. Need we say more?

⑤

Comment: Tough time to be a tobacco lobbyist. First, the President wants to levy a heavy tax on packs (\$0.75 - \$1.25), then the Food and Drug Administration threatens to label cigarettes as an addictive drug.

On top of all that, along comes a smoking ban proposal that is gaining steam. Better than us. We don't intend to roll over and take the blame for indoor air problems. The smoking ban effort is not "defective" - it's the approach that would work.

⑥