NATIONAL ROOFING CONTRACTORS ASSOCIATION

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PLAINTIFF'S EXHIBIT

BIR-711

October 12, 1989

Dear Member:

On March 21 of this year, a delegation of NRCA representatives, including counsel, met with senior representatives from OSHA's compliance office to discuss our concerns with the application of OSHA's asbestos regulations to our industry.

At the meeting, we posed a number of specific questions, hoping to better understand both the agency's policies and its intentions in enforcing the standards. We were told at the meeting that most of our questions would have to be submitted in writing, and we were told to expect OSHA's response within 60 days of their receipt of our letter.

Our letter was dated and mailed May 1. We received the agency's response on September 21.

Our questions and OSHA's responses involve eight pages of correspondence, and it is safe to say that OSHA's responses raise more questions than they answer. We are already in the process of seeking clarification on a number of them, but we frankly hold out little hope for constructive dialogue.

OSHA's letter suggests, to our disappointment, that virtually all evaluations will have to be made on an individual project basis; the agency was unwilling to make any broad statements about its enforcement practices or intentions.

There is, however, one especially troubling area that we must bring to your attention. In section 1926.58 (e) (6) of the OSHA asbestos regulation, OSHA requires that negative-pressure enclosures be established before commencing asbestos removal, demolition, and renovation operations, unless it is not feasible to do so, or unless the project is a "small-scale, short-duration" operation.

Our previous conversations with OSHA officials, and our reading of the regulation, had led us to believe that this section had not been intended for roofing projects, but rather for asbestos abatement projects where the primary, if not only, purpose of the construction work was to abate an asbestos condition, and where significant asbestos emissions

(certainly above the 0.1 fibers per cubic centimeter action level) were likely. Further, Section (e) (6) (iv) of the regulation itself specifically identifies roofing as an example of a "small-scale, short-duration" operation that is not subject to the requirements of (e) (6).

In its recent letter, however, OSHA takes the position that negative-pressure enclosures are required on all asbestos removal, demolition and renovation operations, and apparently OSHA considers roofing projects to fall within that broad category -- regardless of the emission level or of the fact that the removal of asbestos, encapsulated in the roofing materials, is incidental to the reroofing work. In addition, the OSHA response suggests that the "intent" of the project may come under consideration.

We think a good case can be made that installing negative-pressure enclosures on roofs is not feasible, and presents an occupational hazard. We also think a good case can be made that roof removal work qualifies as a small-scale, short-duration operation.

Needless to say, we will pursue every remedy available to us to arrive at a reasonable solution, and we ask that you advise us immediately if you are cited or visited by an OSHA inspector in connection with an asbestos roofing project.

[**NOTE:** A more thorough discussion of section 1926.58 (e) (6) follows. It should be noted that the requirements of that section include more than erecting negative-pressure enclosures; they include protective clothing, respirators, special worker training, decontamination procedures, etc.]

On a similar note, OSHA's response to questions we posed regarding air monitoring have put more demands on us as an industry.

New OSHA regulations now require 30-minute "excursion limit" air monitoring tests in addition to 8-hour, time-weighted average tests. OSHA told us that mathematical extrapolations of 8-hour tests will not be sufficient to satisfy the excursion limit requirement even though it is mathematically impossible to have a violation of the 1.0 f/cc excursion limit if the 8-hour, time-weighted average is less than 0.063 fibers per cubic centimeter.

Also, OSHA advised us that NIOSH method 7400, a commonly used method of fiber analysis, may not satisfy OSHA's requirement that the OSHA Reference Method be used for fiber collection and analysis. Many health experts consider the NIOSH method 7400 to be a more rigorous test method, and most of the data we have were collected and analyzed in accordance with the NIOSH method. In light of these developments, it is

extremely important that, if you are going to be conducting personal air monitoring on an asbestos roofing project, you:

- Conduct 30-minute excursion limit tests
- Conduct air monitoring for a full eight-hour period, regardless of whether asbestos materials are being handled for the full eight-hour period
- Conduct air monitoring and analysis in accordance with the OSHA Reference Method (1926.58 Appendix A)
- Send copies of your results to NRCA.

Not all of the OSHA responses were complete disappointments. OSHA told us that the data we have accumulated from members across the country can be used to satisfy requirements for exemption from initial air monitoring, and that summaries -rather than the full set of 500 test results -- will be sufficient, provided they are from jobs similar to the one in question. It is difficult to reconcile this position with OSHA's stance on establishing negative-pressure enclosures.

We were also told that "worst case scenario" testing can be used for an exemption from initial air monitoring, again assuming similarity requirements are met. Some tests of this kind have been conducted, with favorable results, and we intend to conduct more of them.

Our strategy from here will be to pursue every option available to us. We are presently reviewing proposals from professional industrial hygienists to review and evaluate our situation. We will be retaining representation in Washington to help us seek support from elected officials. We will be doing further testing to support our position that the level of asbestos fiber release in roofing operations is well within acceptable limits. And, as always, we will be counting on your continued help and support.

We're disappointed and frustrated that we don't have better news to report. Be assured that we will do everything in our power to remedy the situation, and please feel free to call if you have questions or need clarification.

Sincerely,

Bill Good

William A. Good, CAE
Executive Vice President

Background on 29 CFR 1926.58 (e) (6)

29 CFR 1926.58 is the OSHA regulation that deals with asbestos in construction work.

Section (e) of 29 CFR 1926.58 is titled "Regulated areas," which are to be established "in work areas where concentrations of asbestos . . . . exceed or can reasonably be expected to exceed the permissible exposure limit" of 0.2 fibers per cubic centimeter over an eight-hour, time-weighted average.

Subsection (6) of 29 CFR 1926.58 (e), "Requirements for asbestos removal, demolition, and renovation operations," requires negative-pressure enclosures "wherever feasible."

Paragraph (e) (6) (iv) reads as follows:

> "Exception: For small-scale, short-duration operations, such as pipe repair, valve replacement, installing electrical conduits, installing or removing drywall, roofing, and other general building maintenance or renovation, the employer is not required to comply with the requirements of paragraph (e) (6) of this section."

Paragraph (e) (6) also requires that a "competent person" be designated and trained, and that person must ensure that:

- employees working within the enclosure wear protective clothing and respirators
- employees are properly trained
- employees use hygiene facilities and follow decontamination procedures that the employer must provide
- engineering controls are functioning properly.

If 29 CFR 1926.58 (e) (6) applies to a work activity, it therefore falls on the employer to provide, among other things:

- the establishment of a negative-pressure enclosure in which asbestos-related work is performed
- protective clothing and respirators
- assurances that clothes are properly laundered
- change areas and decontamination areas

- o showers and clean rooms
- o equipment rooms
- o warning signs and labels
- o employee information and training
- o medical surveillance and examinations.

It is certainly arguable that 1926.58 (e) (6) was not intended to apply to roofing work in particular, or to areas where exposures do not exceed the permissible exposure level of 0.2 fibers per cubic centimeter over an eight-hour, time-weighted average, or the excursion limit of 1.0 fibers per cubic centimeter.

It is also arguable that roofing operations are neither "removal" nor "renovation" projects for the purposes of this section. In the preamble of the regulation, OSHA says:

> "Removal," "renovation," and "repair" are terms that refer to those high-exposure operations involving the taking out, modification, or overhauling of previously installed friable asbestos materials, structures, and substrates.

Most government agencies, officials and individuals with knowledge concerning asbestos-containing roofing materials have recognized that asbestos-containing roofing materials are not "friable."

Copies of the complete OSHA regulations, NRCA's questions to OSHA, and OSHA's responses are available on request to any interested member.

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