

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: NORTHERN DISTRICT ASBESTOS
LITIGATION

NDAL RESPONSES TO
PLAINTIFFS' FIRST
STANDARD SET OF
LIABILITY INTERROGATORIES

This Document Applies to All Cases

The defendant, Eagle-Picher Industries, Inc., by its attorneys, BOUVIER, O'CONNOR, as and for their responses to plaintiffs' Interrogatories, incorporates this Preliminary Statement and General Objections:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

Information provided herein, except where indicated for Eagle-Picher, is with respect only to the Fibers Department of the Chemicals and Fibers Division of Eagle-Picher Industries, Inc. ("Eagle-Picher"), which department was sold on December 31, 1982, and which is hereinafter referred to as the "Company", since it is the only unit of defendant which ever produced or sold industrial insulation with which the plaintiffs may have come into contact.

1. Eagle-Picher objects to Plaintiffs' First Standard Set of Liability Interrogatories and Document Requests because they are overly broad, unduly burdensome and oppressive, because

The Company set no specific policy with regard only to the manufacture and/or sale of its asbestos-containing insulation products. However, the General Manager was ultimately responsible for the policies of the Company. The following were General Managers of the Company:

Thurman C. Carter, Deceased	(1928-1948)
Clyde B. Lynde, Deceased	(1948-1949)
Glen J. Christner	(1950-1961)
Harold F. Nunn, Deceased	(1961-1964)
Jefferson W. Hudson	(1964-1971)
Robert L. Bockstahler	(1971-11/1981)

Defendant objects to the remainder of this interrogatory for it is overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Q9. Have you or any of your predecessors or subsidiaries ever mined, manufactured, designed, supplied, processed, refined, sold and/or distributed asbestos or asbestos-containing products? If so, for each such product, complete an "Asbestos Product Information Sheet" (Attachment No. 1).

ANSWER to Q9.

Eagle-Picher never mined asbestos. The Company formerly manufactured and sold asbestos-containing insulation products. Attachment I is herein incorporated by reference.

766,185	Hylo	March 10, 1964
773,931	One-Cote*	July 28, 1964, cancelled 1970
836,968	Hi-Stick	October 17, 1967, abandoned 1972

In addition, the Company had trademarks for four experimental products which were not marketed successfully.

• Used on packages of asbestos-containing insulation products and non-asbestos-containing insulation products.

(e-f) (Asbestos content and type of asbestos)

According to the Company's annual cost of production accounting records, the approximate asbestos content of the insulation products formerly manufactured by the Company was as follows:

<u>Product</u>	<u>Approx. Asbestos Content (by weight) Percentage</u>
CEMENTS:	
Super "66" Insulating Cement	8.8 to 12.0 (1930-1934) 8.5 to 10.0 (1935-1963) 4.0 to 4.4 (1964-1968) 3.5 to 3.6 (1969-8/1971)
"43" Finishing Cement	73.0 to 76.3 (1944-1971) 75.7 (1 and 4/1972)
"Fireproofing" Cement	3.5 to 3.6 (1948-1960) 2.8 to 3.1 (1961-1965)
One-Cote Finishing Cement	3.3 (1960) 4.8 to 6.3 (1961-1967) 2.8 to 3.2 (1968-9/1971)

Hylo Finishing Cement	4.8 to 5.5 (1963-1967) 2.7 to 6.9 (1968-9/1971)
Hi-Stick Insulating Cement	4.3 to 6.3 (1964-1969)
"33" Insulating Cement	7.8 to 10.8 (1935-1944) 13.8 to 14.7 (1945-1949)
"99" Finishing Cement	72.2 to 82.6 (1935-1962)
"106" Finishing Cement	25.2 to 28.5 (1948-1962)
"111" Finishing Cement	2.1 to 3.7 (1935-1966)
"330" Insulating Cement	8.9 to 10.0 (1939-1940) (1942&1945)
"1003" Finishing Cement	4.7 (1947 only)
Navy Grade Cement	14.6 to 16.2 (1955-1956) 8.3 to 8.8 (1958-1959)
Navy Special Cement	11.9 (1945 only)
MASTICS:	
Insulseal	16.8 to 20.8 (1935-1968)
Insulseal-All Purpose	6.0 to 6.9 (1968-1969)
Insulstic-Towel Grade	12.5 to 16.0 (1939-1962)
Insulstic-Brush Grade	7.1 to 16.4 (1942-1953) 7.5 to 13.5 (1957-1959)
Swetchek	1.6 to 11.3 (1945-1947) 1.5 to 1.9 (1948-1961)
BLOCK:	
Vercel Block	4.1 to 7.5 (1937-1944)
DE 85 Block	4.2 to 10.3 (1947-1953)
DE 95 Block	9.7 (1949) 4.0 to 9.1 (1950-1953)

Supertemp Block*

1.0 to 4.0 (1938-1940)
0.3 to 1.6 (1941-1945)

The Company used only chrysotile asbestos in asbestos-containing insulation products it formerly manufactured, except for D.E. Block, which contained chrysotile and amosite asbestos.

The products sold, but not manufactured, by the Company contained chrysotile asbestos, except Hylo Block and Pipe Covering which was produced by Owens-Corning Fiberglas and which at times may have contained chrysotile and amosite asbestos. The Company is uncertain what type of asbestos 85% Magnesia Pipe Covering and Block Insulation contained.

The percentage of asbestos in each asbestos-containing insulation product which the Company formerly sold, but did not manufacture, may be available from the manufacturer.

*The Company's year end cost of production accounting records reveal that a small percentage of chrysotile asbestos fiber was charged against a product known as "Supertemp Block." However, former plant managers of the Company deny that the product ever contained asbestos fiber.

(g) (Mineralogical and/or constituent composition by weight of each constituent)

Defendant objects to this portion of the interrogatory for it is overly broad, unduly burdensome, irrelevant and

1948	1,108 tons	No invoices		
1949	760 tons	No invoices		
1950	920 tons	No invoices		
1951	1,117 tons	No invoices		
1952	820 tons	No invoices		
1953	960 tons	No invoices		
1954	848 tons	No invoices		
1955	840 tons	No invoices		
1956	662 tons	No invoices		
1957	680 tons	No invoices		
1958	600 tons	No invoices		
1959	520 tons	No invoices		
1960	650 tons	No invoices		
1961	560 tons	No invoices		
1962	550 tons	No invoices		
1963	553 tons	(Only 1 inv. exists)	50	
1964	400 tons		350	-- 50
1965	400 tons		400	-- --
1966	350 tons		350	-- --
1967	300 tons		200	100 --
1968	212 tons		50	162
1969	212 tons		50	162
1970	200 tons		--	200 --
1971	100 tons		--	100 --

In addition, one-fourth ton of amosite asbestos was purchased in 1935, and 662 tons of amosite asbestos were purchased from 1947 to 1953 for use in DE Block. However, only 608.3 tons were used in production; the unused surplus balance of 53.7 tons was sold during the years 1954-1957.

All shipments of asbestos were received by the Company at its Joplin, Missouri, plant. See Exhibit I.

Q22. With respect to each asbestos product (including loose asbestos fiber) you manufactured, refined, processed, sold and/or delivered, state whether you claim any caution, warning, caveat or other statement about health involved in using the product and/or dust generated by the product was ever given to purchasers of the product or directed to the users of the product. If so, state separately for each product:

a. The precise wording of each caution or set of instructions;

b. For each asbestos product, the exact date you claim each caution was first used on that product;

c. The inclusive dates you contend any alleged warning was affixed to each of your asbestos-containing products;

d. Whether the wording of the alleged warning has been altered since its first appearance, and if so, when and how amended;

e. Specifically, what prompted you to first affix such caution, warning, caveat, statement or explanation, and what prompted the amendments (i.e., if medical reports were relied upon, if so, identify such reports);

f. The name, title and present address of the author of each such warning and/or instructions;

g. Whether the warning and instructions were physically attached to the product itself when sold and/or delivered to you, and if so, the method of attachment;

h. Whether you have a copy of the warning and/or instructions in your possession at the present time, and if so, where it is located;

i. Whether any studies, evaluations or analyses of any potential hazards of your asbestos product were conducted by you prior to your use of each warning and/or instructions. If so, identify the study by date, author, title and file number and state its present location;

j. The exact date you decided to use the warning, caution and/or instructions;

k. The method used to distribute the warning, caution and/or instructions to persons who are likely to use the product.

ANSWER to Q22.

Defendant objects to this interrogatory to the extent that it may call for information protected by the attorney-client

and/or work product privilege. Without prejudice to or waiver of this objection, and subject to same, after being advised in 1964 by the National Insulation Manufacturers Association (NIMA) that the major producer of asbestos products, Johns-Manville Corporation, had informed the NIMA Board that it was placing the following caution on its products that contained asbestos, the Company elected to follow this practice of the industry leader.

The caution was placed on the containers of the Company's asbestos-containing finishing and insulating cements in June, 1964. This same caution remained on these products until they no longer contained asbestos or they were discontinued.

"CAUTION. This product contains asbestos fiber. Inhalation of asbestos in excessive quantities over long periods of time may be harmful. If dust is created when this product is handled, avoid breathing the dust. If adequate ventilation control is not possible, wear respirators approved by the U.S. Bureau of Mines for pneumoconiosis dust."

The caution was located on the lower third of the front of the bag.

Hylo Block and Pipe Covering, which were produced by Owens-Corning and were merely sold by the Company, included a caution on the packages beginning in January, 1967.

Additionally, in a June 2, 1964, letter to those for whom the Company produced private-label asbestos-containing insulation products, Mr. John Harrington, General Sales Manager,

enclosed an excerpt from a meeting of the Board of Directors of the National Insulation Manufacturers Association (NIMA) regarding Johns-Manville's placing of a cautionary note on its asbestos products; he stated that the Company was planning to use the same cautionary note, and asked those companies if they wished the same action taken on their behalf.

The Company placed a caution on the containers/ packages of its asbestos-containing insulation products.

The Company adopted the caution which Johns-Manville had informed the NIMA Board that it was going to place on its products that contained asbestos.

See Exhibit VI for a copy of the caution. The caution is in the possession of the Corporate Legal Department, Cincinnati, Ohio.

Also, Material Safety Data Sheets were supplied upon request.

Q23. State whether any of your distributors, dealers, contractors, and/or customers were provided with any warnings, cautions, caveats or instructions regarding the use of your asbestos-containing products. If so, please state:

a. By whom and when these instructions were first made;

b. Whether the instructions were written or oral; if written, attach a copy; if oral, state the contents thereof;

c. Whether your company carried out follow-up inspections to ascertain whether such instructions were adhered to and if so, please state when, where and by whom such inspections were made and the results of each such inspection;

subject matter of this lawsuit or which may lead to the discovery of information material to the subject matter of this lawsuit.

ANSWER to Q118.

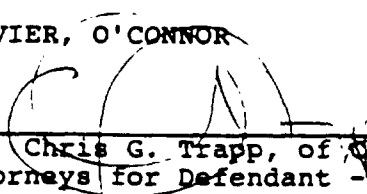
Defendant objects to this interrogatory because it is over broad and unduly burdensome. Without prejudice to or waiver of this objection, see answers to Interrogatories Nos. 1-117, above. Furthermore, defendant states that discovery in this matter is ongoing therefore defendant reserves the right to supplement its answer and will timely identify any witnesses to plaintiff prior to trial and pursuant to any discovery schedule ordered by this Court.

Dated:

Buffalo, New York

Yours, etc.,

BOUVIER, O'CONNOR

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Product Name	Date Began/Discontinued Manufacture	Description	Cont.
Inuletic	1939/1962	Adhesive material used to temporarily hold in place and to speed the application of rigid and semirigid insulation.	Asbesto., Sodium Silicate
Swatchek	1945/1961	Asphaltic base compound used to prevent condensation.	Asphalt, Alcohol, Asbestos, Calcium Carbonate
Vercal Block	1937/1944	Vermiculite insulating block for use up to 1400°F.	Vermiculite, Clay, Asbestos, Magnesium Sulfate
Supertemp Block	1938/1945	Dark gray mineral wool insulating block composed of Eagle-Picher Mineral Wool and suitable binding agents and formed into semirigid shapes with square corners and parallel faces.	Mineral Wool Tufts, Linseed Oil, Asbestos, Bentonite Clay, Magnesium Sulphate, Starch, Sodium Silicate
"DE 85" Block	1947/1953	Rigid type Diatomaceous Earth block used on a variety of heated equipment with temperatures up to 1300°F.	Diatomite, Lime, Perlite Asbestos, White Plaster
"DE 95" Block	1949/1953	Diatomaceous Earth block used principally on heating surfaces exposed to higher temperature range (to 2000°F)	Diatomite Aggregate, Plaster, Lime, Vanetian Red Dye, Asbestos

NOTE: Several of the products listed were also packaged under private labels.

In the Company's year end cost of production accounting records reveal that a small percentage of chrysotile asbestos fiber was charged against a product known as "Supertemp Block." However, former plant managers of the Company deny that the product ever contained asbestos fiber.

Other Designation	Private Label Designation	Company	Agreement Dates	Sales Dates
Super "66" Insulating Cement	A. P. Green Insulating Cement*	A. P. Green Fire Brick Co.	5/1/48 to 8/16/71	1949 - 1971
	C-18 Insulating Cement*	Bigelow-Liptak Corporation	5/5/49 to 8/16/71	1949 - 1971
	CC-660 Insulating Cement**	Owens-Corning Fiberglas, Supply and Contracting Division	1958 to date unknown	1958 - 1967
	SC-40 Insulating Cement*	Owens-Corning Fiberglas, Supply and Contracting Division		1967 - 1971
	FDNCO Mineral Wool Insulating Cement	Fiberglass Engineering Co.	12/26/57 to 8/16/71	1953 - 1958
	Stazon Cement*	North American Refractories Co.		1958 - 1971
	Fitch #1	Fitch Recuperator Co.		1939 - 1955
	Armstrong No. 166**	Armstrong Contracting & Supply Div.	3/15/62 to date unknown	1937 - 1971
	MA-50**	Philip Carey	1956 to 1968	1958, 1966, 1967
	H. W. Insulating Cement	Harbison-Walker	2/24/53 to 1/1/57	1953 - 1958
	Unarco No. 330 Cement**	Union Abestom & Rubber Co.	8/1/57 to date unknown	1953 - 1962
	Mineral Wool Insulating Cement, Grade 313*	GA*	12/11/70 to 5/26/71	197
	General Refractories Insulating Cement	General Refractories Co.	6/16/49 to date unknown	1949 - .
		H. K. Porter, Refractories Div.		1966 -
		Babcock & Wilcox, Refractories Div.		1966 -
"33" Insulating Cement	Fitch #2	Fitch Recuperator Co.		1940 - 1941
				1943 - 1946
				1948 - 1950

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July 7, 1989

All Northern District Asbestos
Litigation Counsel

RE: NDAL Responses to Plaintiffs'
First Standard Set of Liability
Interrogatories

Dear Counselors:

Enclosed for service upon you please find the defendant Eagle-Picher Industries, Inc.'s responses to plaintiffs' first set of liability interrogatories.

Very truly yours,

BOUVIER, O'CONNOR

HB Bronson 122
Harry B. Bronson

HBB/11

ANY
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