

FILE NAME: National Safety Council (NSC)

DATE: 1935

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DOCUMENT DESCRIPTION: License Agreement Between Donald Tulloch, Jr. & Johns-Manville Corp.

This Agreement made and entered into this 11th day of August, 1935,
REPORTER: Johnston
ETHEL E. FISHER & ASSOCIATES, INC.

by and between DONALD TULLOCH, JR., of Philadelphia, Pennsylvania, hereinafter termed the Licensor,
and JOHNS-MANVILLE CORPORATION a corporation
duly organized and existing under the laws of the State of New York, and
having its principal office located at 22 East 40th Street, City of New York, State of
New York, hereinafter termed the Licensee,

Witnesseth:

Whereas, the Licensor has the right to grant licenses under United States Letters Patent No. 1,972,500, granted September 4, 1934, and

Whereas, the Licensee is desirous of obtaining a license to make, use and sell such of the materials and products embodying, employing, and containing the invention patented by said Letters Patent as are enumerated in the list annexed hereto marked "List of Licensed Materials" and made a part hereof, which materials and products so enumerated are hereinafter referred to as the "Licensed Materials,"

Now, therefore, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, in hand paid, and in consideration of the covenants contained herein, the parties hereby agree as follows:

Section I. The Licensor has given and granted and by these presents does give and grant to the Licensee, subject to the covenants and conditions hereinafter expressed, a non-exclusive right and license to make, use and sell the Licensed Materials within the territory covered by said Letters Patent during the term for which said Letters Patent and any reissue or extension thereof have been or may be granted, unless this agreement is sooner terminated as provided herein; but the Licensor has reserved and by these presents does reserve the right to demand and receive from the Licensee royalties or license fees in the amount hereinafter stated, which said royalties or license fees shall be at rates no higher on any size or kind of the Licensed Materials than are paid on the same size and kind of the Licensed Materials by any other licensee under said Letters Patent, and the right from time to time to specify and establish the minimum price at which and the terms and conditions on which the Licensee shall use each size and kind of the Licensed Materials and the minimum price at which and the maximum terms and conditions of sale on which the Licensee shall sell each size and kind of the Licensed Materials to each of the several classes of trade therein as such prices, terms, conditions, and classes of trade are specified and established in the schedules annexed hereto and made a part hereof, and the right from time to time to amend said schedules and to issue and amend new schedules hereunder, provided that, as to any size or kind of the Licensed Materials, the schedules shall not be less favorable to the Licensee than those imposed upon any other licensee under said Letters Patent with respect to the same size or kind of the Licensed Materials.

Section II. The Licensee shall pay to the Licensor royalties or license fees in an amount equal to one-quarter of one per cent. ($\frac{1}{4}\%$) of the list value as set forth in the schedules annexed hereto and without regard to any amendments thereof, of the quantity of the Licensed Materials enumerated in Part I of the List of Licensed Materials and used hereunder or sold hereunder. No royalties or license fees shall be payable by the Licensee with respect to Licensed Materials manufactured by it for any of its affiliates, as hereinafter defined.

Section III. The Licensee shall keep full and accurate books of account showing (a) the several quantities of each size and kind of the Licensed Materials used, sold or shipped hereunder, (b) the date on which each of these several quantities are thus used, sold or shipped, (c) the list value of each of these several quantities on the date of use or sale, (d) the price at which and the terms and conditions on which each of these several quantities are thus used, and (e) the price at which, the terms and conditions of sale on which, and the class of trade to which each of these several quantities are thus sold. On or before the fifteenth day of each calendar month, the Licensee shall deliver to the Licensor at his address as hereinafter provided a written statement of account in such form as shall be prescribed by the Licensor, verified under oath by an officer or employee of the Licensee conversant with the facts, setting forth with regard to the preceding calendar month the list value of the quantity of each kind of the Licensed Materials enumerated in Part I of the List of Licensed Materials and used hereunder or sold hereunder, and the amount of royalties or license fees, calculated as above provided, payable by the Licensee with regard to each kind of the Licensed Materials thus used or sold. This statement of account shall be accompanied by a statement, verified under oath by an officer or employee of the Licensee conversant with the facts, either stating that the Licensee has not deviated or departed during the period covered by said statement of account from the covenants and conditions of this agreement or of any schedules in effect hereunder during such period, or stating in detail in which particulars the Licensee has deviated or departed therefrom. On or before the fifteenth day of each calendar month, the Licensee shall pay to the Licensor at his address as hereinafter provided the amount of royalties or license fees payable with regard to the preceding calendar month as set forth on said statement of account.

Section IV. The Licensee shall not sell or offer to sell any of the Licensed Materials at prices lower or on terms or conditions of sale more favorable to the purchaser than those permitted by the schedules in effect hereunder at the time of such sale or offer to sell, and shall not use any of the Licensed Materials at prices lower or on terms and conditions other than those permitted by the schedules in effect hereunder at the time of such use. To establish any amendment of said schedules as annexed hereto or any new schedules or amendment thereof, the Licensor shall notify the Licensee by mailing or telegraphing a copy of the same to the Licensee, simultaneously with like notice to all other licensees under said Letters Patent having a license to manufacture, use or sell the materials or products affected by the amendment or by any new schedule or amendment thereof, and such amendment or new schedule or amendment thereof shall be in effect hereunder at the time fixed in such notice or immediately upon receipt thereof by the Licensee if received after the effective date fixed in such notice.

Section V. The Licensee covenants and agrees that all Licensed Materials sold hereunder will be sold pursuant to a bona fide sale unless the Licensee is expressly permitted by the schedules in effect hereunder at the time to place on consignment the kind of Licensed Materials which the Licensee desires so to place.

Section VI. The Licensee shall mark all of the Licensed Materials used or sold hereunder in accordance with the provisions of 35 U. S. C. A. Sec. 49, or any amendment or amendments thereof.

Section VII. The Licensee shall exert all reasonable and reasonably continuous efforts to promote the use and sale of the Licensed Materials and to establish and supply continuously as large a market therefor as the Licensee is from time to time reasonably able to establish and supply.

Section VIII. In the event that the Licensee shall use or sell any of the Licensed Materials in violation of this agreement or the schedules in effect hereunder at the time of such use or sale, the Licensee shall pay to the Licensor as liquidated damages, within ten days after the Licensor has given notice of such violation to the Licensee, an amount equal to fifty per cent. (50%) of the proper net selling price of the quantity of the Licensed Materials thus used or sold as such net selling price is specified and established by the schedules in effect hereunder at the time of such use or sale. Such payment shall not, however, defeat or impair any other right or privilege of the Licensor arising upon such violation.

Section IX. At all reasonable times during business hours, the Licensor or his accredited representatives shall have the right and are hereby authorized to inspect and audit the books of account and all other records, data and memoranda of the Licensee relating to the manufacture, use, sale or shipment of Licensed Materials manufactured, used, sold or shipped hereunder, and shall have the right and are hereby authorized to make and retain copies thereof and extracts therefrom which in the Licensor's opinion tend to show violation of this agreement.

Section X. The Licensor shall not sell or offer to sell or cause or permit others to sell or offer to sell for him or on his behalf any of the Licensed Materials at prices lower or on terms or conditions of sale more favorable to the purchaser than those permitted by the schedules in effect hereunder at the time of such sale or offer to sell, and shall not use or cause or permit others to use for him or on his behalf any of the Licensed Materials at prices lower or on terms or conditions more favorable than those permitted by the schedules in effect hereunder at the time of such use.

Section XI: During the existence of this agreement, the Licensee admits the validity of said Letters Patent and covenants and agrees that it will not violate or infringe the same or any claim or claims thereof, and will not contest or question the validity of the same or of any claim or claims thereof, or the sufficiency of the specifications thereof, or the title thereto of those under whom the Licensor claims, or the right of the Licensor to grant licenses thereunder, and will not voluntarily render assistance to anyone who contests or questions the validity of the same or of any claim or claims thereof, or the sufficiency of the specifications thereof, or the title thereto of those under whom the Licensor claims, or the right of the Licensor to grant licenses thereunder.

Section XII. The Licensee covenants and agrees that if anyone not a party to this agreement institutes against the Licensee any action, suit or proceeding which in any way involves or affects the validity of this agreement, or the validity of said Letters Patent or of any claim or claims thereof, or the sufficiency of the specifications thereof, or the title thereto of those under whom the Licensor claims, or the right of the Licensor to grant licenses thereunder, or the right of the Licensee to use the invention of said Letters Patent, the Licensee will immediately notify the Licensor in writing of the institution of such action, suit or proceeding and will not compromise or settle the same, or default in appearing or pleading therein, or consent to the rendition of a judgment, decree, order or other determination therein unless and until the Licensee has notified the Licensor in writing of its intention to compromise, settle, default or consent as aforesaid and thereafter given the Licensor a reasonable opportunity, within the time allowed in such action, suit, or proceeding for the Licensee to file pleadings, default, or take action, to join in or take over and continue the defense of such action, suit or proceeding upon terms and conditions satisfactory to the Licensee.

Section XIII. In the event that any clause or provision of this agreement shall be held invalid for any reason by any court of last resort or by any lower court from which no appeal is seasonably taken, either party hereto may terminate this agreement by notice in writing to the other party, provided such notice is delivered to the other party within thirty days after notice to the Licensee of the entry of a decree from which there can be no appeal, or within thirty days after expiration of time to appeal from a decree from which no appeal has been taken, entered in the action, suit or proceeding in which such clause or provision is held invalid. Prior to the delivery of such notice of termination or in the absence thereof within such thirty days, the remainder of this agreement shall not be invalidated by the invalidity of such clause or provision but shall remain in full force and effect and shall be construed as though such invalid clause or provision had been omitted. For the purposes of this Section XIII, the term "clause or provision" shall not include any claim of said Letters Patent.

Section XIV. If any claim of said Letters Patent shall be held invalid for any reason by any court of last resort or by any lower court from which no appeal is seasonably taken, and if at the time of the entry of the final decree in the action, suit or proceeding in which such claim is held invalid such claim has not been held valid by any court of equal or greater authority in another action, suit or proceeding in which the validity of such claim has been contested or questioned and a final decree entered therein, the obligation of the Licensee to pay the royalties or license fees which are payable hereunder only by reason of such claim shall, except as to that part of such royalties or license fees which are payable with respect to Licensed Materials previously used or sold hereunder, terminate immediately upon the entry of the final decree in the action, suit or proceeding in which such claim is held invalid; provided, however, that if such claim shall subsequently be held valid by any court of equal or greater authority in another action, suit or proceeding in which the validity of such claim has been contested or questioned, the aforesaid obligation of the Licensee shall again be in full force and effect and shall be deemed to have been in full force and effect without interruption since the date of the execution of this agreement and the Licensee shall pay to the Licensor at his address as hereinafter provided within thirty days after the entry of the final decree in such action, suit or proceeding any unpaid balance of the royalties or license fees which are payable hereunder only by reason of such claim with respect to Licensed Materials used or sold by the Licensee prior to the first day of the calendar month in which such final decree is entered.

Section XV. The Licensor shall, promptly upon the request in writing of the Licensee, deliver to the Licensee at its address as hereinafter provided a complete copy of each license heretofore or hereafter granted under said Letters Patent by the Licensor. If any license has been or is hereafter granted under said Letters Patent by the Licensor on terms more favorable to the Licensee under such license with respect to any of the Licensed Materials than those set forth herein with respect to the same material or product, the Licensor shall grant to the Licensee a license under said Letters Patent with respect to said material or product, on the terms set forth in such more favorable license. For the purpose of this Section XV, the granting under said Letters Patent of a license to make, use or sell only some of the kinds of Licensed Materials (all other terms and conditions being the same as herein with respect to the same materials or products), or the granting thereunder of a license to make, use or sell materials or products other than or in addition to the Licensed Materials, shall not constitute the granting of a license on terms more favorable to the licensee under such license.

Section XVI. The Licensor shall not exercise any of the rights reserved to the Licensor in Section I of this agreement unless the Licensor has reserved the same right in each and every license granted under said Letters Patent by the Licensor and unless at the time of the exercise of such right with respect to any size or kind of the Licensed Materials the Licensor exercises the same right to the same extent and in the same manner with respect to each licensee licensed to make, use or sell the same size and kind of the Licensed Materials.

Section XVII. All disputes, controversies, differences and questions as to the construction, meaning or effect of this agreement or any clause or thing herein contained or referred to, or the rights or liabilities of the parties hereunder or otherwise howsoever in relation to this agreement or the subject matter thereof, except disputes, controversies, differences and questions relating to the infringement of said Letters Patent, shall be settled and determined by arbitration as follows:

In the event of any such dispute, controversy, difference or question, either party may appoint an arbitrator and shall give written notice thereof to the other. Thereupon, within ten days after the giving of such notice, the other party shall appoint a second arbitrator and give written notice of such appointment to the party who shall have appointed the first arbitrator, and in default of such second appointment within said time the arbitrator first appointed shall be the sole arbitrator. When any two arbitrators have been appointed as aforesaid, they shall, if possible, agree upon a third arbitrator and shall appoint him by notice in writing signed by both of them in triplicate, one of which triplicate notices shall be given to each party hereto; but if ten days shall elapse after the appointment of a second arbitrator without notice of the appointment of a third arbitrator being given as aforesaid, then either party hereto (or both) may in writing request the person who is at the time the Chairman or Acting Chairman of the Arbitration Committee of the Chamber of Commerce of the State of New York to appoint a third arbitrator; and upon the appointment of the third arbitrator (whichever way appointed, as aforesaid) the three arbitrators shall meet and give notice to each party hereto to present its case and witnesses, if any, in the presence of the other, and shall then make their award; and the award of the majority of the arbitrators shall be binding upon the parties hereto and judgment may be entered thereon in any court having jurisdiction. Such award shall include the fixing of the expenses of the arbitration and the assessment of the same against either or both of the parties hereto.

Section XVIII. In the event of the insolvency or bankruptcy of the Licensee, or the filing of a petition in bankruptcy by the Licensee, or the making of an assignment for the benefit of creditors by the Licensee, or the appointment of a temporary or permanent receiver of all or substantially all of the property of the Licensee, or upon the initiation by the Licensee of proceedings for a reorganization of the Licensee (based upon insolvency or inability of the Licensee to meet its obligations as they mature), or upon the allowance of any of such proceedings against the Licensee by any court, then in any such case the Licensor may terminate this agreement forthwith by notice in writing to the Licensee.

Section XIX. In the event that the Licensee shall at any time default in the due observance or performance of any covenant or condition herein required to be observed or performed by the Licensee, the Licensor may, thirty days after notice in writing to the Licensee of its intention so to do and of the default with respect to which such notice is given, terminate this agreement by a second notice in writing to the Licensee unless the Licensee, within said period of thirty days after the giving of the first notice, shall have rectified such default. In the event that the Licensee, having been notified of a default, shall repeat such default, the Licensor may, regardless of the rectification of the default with respect to which such notice has been given, terminate this agreement forthwith by notice in writing to the Licensee. Failure by the Licensor to exercise any of his rights under this Section XIX shall not constitute or be construed as a condonation of a default or as a waiver by the Licensor of any of his rights or privileges under this agreement.

Section XX. In the event that the Licensee shall make, use, or sell any material or product which is used or useful for the same or similar purposes as any of the Licensed Materials, but which does not embody, employ, or contain the invention patented by said Letters Patent, and which, in the judgment of the Licensor, will interfere with the Licensee's efforts to promote the use and sale of the Licensed Materials and to establish and supply continuously as large a market therefor as the Licensee is from time to time reasonably able to establish and supply under this agreement, the Licensor may terminate this agreement forthwith by notice in writing to the Licensee. Failure by the Licensor to exercise any of his rights under this Section XX shall not constitute or be construed as a condonation of any such action by the Licensee or as a waiver by the Licensor of any of his rights or privileges under this agreement. *Stinson*

Section XXI. In the event that the right of the Licensor to grant licenses under said Letters Patent shall terminate, this agreement shall thereupon terminate forthwith.

Section XXII. Either party hereto may terminate this agreement on December 31, 1936, or on December 31 of any alternate year thereafter by notice in writing delivered to the other party at least ninety days before such termination date. Except as otherwise provided herein, this agreement shall remain in full force and effect during the term for which said Letters Patent and any reissue or extension thereof have been or may be granted.

Section XXIII. Upon the termination of this agreement by lapse of time or otherwise, neither party hereto shall be relieved from any obligation which shall have accrued prior to such termination and the Licensee shall continue to be bound by the covenants and conditions of Sections II, III and XIV hereof until the Licensee has paid royalties or license fees in accordance with the terms of said Sections II, III and XIV with respect to all Licensed Materials used or sold hereunder prior to such termination. Except as provided in this Section XXIII, neither party hereto shall be estopped or otherwise prejudiced after the termination of this agreement by the previous existence of this agreement or by anything done or omitted to be done during such existence.

Section XXIV. For the purposes of this agreement, the Licensor's address shall be Inquirer Building, Philadelphia, Pennsylvania, and the Licensee's address shall be the address stated in naming the Licensee a party hereto; or such other address or addresses as the party to be addressed may hereafter specify by notice in writing to the other party. Any notice which may be sent hereunder by either party shall be addressed to the other party as provided in this Section XXIV and if such notice is sent by the registered mail of the United States properly enclosed in an envelope with fully prepaid postage and the words "receipt requested" or their equivalent thereon, such notice shall be deemed to have been delivered when such receipt is received by the party sending such notice.

Section XXV. For the purposes of this agreement, the term "affiliate" refers to a corporation that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Licensee hereunder whether such control be through the ownership of voting securities, by contract, or otherwise.

The Licensors hereby grants to each affiliate of the Licensee, for the term of this agreement, a license under said Letters Patent upon the terms and conditions hereof and covenants and agrees that each such affiliate shall be entitled to all of the benefits accorded to the Licensee hereunder. The Licensee covenants and agrees that each such affiliate shall be bound by and shall observe and perform all of the terms and conditions hereof to the same extent and with the same effect as though each such affiliate had been named Licensee hereunder.

Any licensee under said Letters Patent may manufacture any of the Licensed Materials for any of its affiliates upon such terms as may be agreed upon by said Licensee and such affiliate; provided, however, that the use and sale by the Licensee for whom Licensed Materials have been so manufactured shall be subject to all the terms and conditions hereof to the same extent and in the same manner as if the Licensed Materials had been manufactured by the Licensee so using or selling the same.

Section XXVI. This agreement shall be for the benefit of and shall be binding upon any corporation with which the Licensee shall be lawfully merged or consolidated to the same extent and with the same effect as though such corporation had been named Licensee hereunder. Except as permitted by this Section XXVI or by Section XIII or Section XXV hereof, this agreement and each of the rights and privileges hereby granted to the Licensee shall be indivisible, non-transferable and non-assignable by act of the Licensee or by operation of law.

In Witness Whereof, the Licensors has set his hand and seal hereto and the Licensee has caused this agreement to be signed by its President or Vice-President and its seal to be affixed hereto and attested by its Secretary or Assistant Secretary the day and year first above written.
In the Presence of:

M. A. Macan

Donald T. Haff (L. S.)

JOHNS-MANVILLE CORPORATION

2011

By

R. R. Haff
Vice-President

Attest:

William J. ...
Assistant Secretary

LIST OF
 LICENSED MATERIALS FORMING PART OF LICENSE
 UNDER
 UNITED STATES LETTERS PATENT NO. 1,972,500
 BETWEEN
 DONALD TULLOCH, JR.
 AND
 JOHNS-MANVILLE CORPORATION

Dated _____

This list of Licensed Materials forms a part of the aforesaid License Agreement and contains a complete list of materials embodying the invention of the patent that

is licensed to manufacture, use or sell under the said License.

Any materials embodying the invention of the patent not included in the following list are excluded from the license and no right or license is granted to make, use or sell such material.

1. Low Pressure (Coarse Corrugated) Aircell Type Asbestos Pipe Covering, Sheets and/or Blocks.

Materials so designated shall consist of alternate layers of flat asbestos paper joined with corrugated asbestos paper of $\frac{1}{4}$ " corrugation. This material shall be manufactured in the form of sectional pipe covering in thicknesses of two ply ($\frac{1}{2}$ ") or greater and in the form of sheets or blocks in thicknesses of $\frac{1}{4}$ " and up in increments of approximately $\frac{1}{4}$ ".

2. Low Pressure (Fine Corrugated) Aircell Type Asbestos Pipe Covering, Sheets and/or Blocks.

Materials so designated shall consist of alternate layers of flat asbestos paper joined with corrugated asbestos paper of $\frac{1}{6}$ " or $\frac{1}{8}$ " corrugations. This material shall be manufactured in thicknesses of 2 ply or over, thicknesses increasing in increments of 1 ply.

3. Low Pressure Laminated Type Asbestos Pipe Covering, Sheets and/or Blocks.

Materials so designated shall consist of not more than sixteen laminations per inch of thickness of indented, wave structure or other individual sheets of asbestos paper, and shall be furnished in thicknesses of 1" and up in increments of $\frac{1}{2}$ " for pipe covering or in thicknesses $\frac{1}{4}$ " and up in increments of $\frac{1}{4}$ " for sheets and/or blocks.

4. Woolfelt Type Pipe Covering.

Materials so designated shall consist of laminations of woolfelt paper, flat, corrugated or indented and shall be furnished with an inner liner and/or an outer wrapper of asbestos paper. Such materials shall be furnished in sections of $\frac{1}{2}$ ", $\frac{3}{4}$ " and 1" thickness, in solid construction, or in double shell construction consisting of two layers of $\frac{1}{2}$ ", $\frac{3}{4}$ " or 1" thickness for all standard pipe sizes.

5. Anti-Sweat Type Pipe Covering.

Materials so designated are described as those pipe coverings containing in their internal body construction layers of water repellent asbestos felt spaced between the layers of dry deadening felt or dry wool felt and/or with both the inner liner and the outer jacket of the shell or shells being a layer of the aforementioned water repellent felt. Thicknesses of anti-sweat less than 1" thick shall be solid construction. Thicknesses of anti-sweat 1" thick and over must be double shell construction. The use of "anti-sweat" or any similar descriptive term in connection with covering not constructed as above described is prohibited.

6. Frost Proof Type Pipe Coverings.

Materials so designated shall consist of from 1" to $1\frac{1}{4}$ " total thickness of layers of hairfelt or other approved insulation and woolfelt. An inner liner of water repellent asbestos paper shall be used.

7. High Pressure Laminated Type Asbestos Pipe Covering, Sheets, and/or Blocks.

Materials so designated shall consist of 17 layers or over per inch thickness of sponge felt paper or indented, wave structure or other asbestos paper recommended for temperatures above 300°, in thicknesses from $\frac{1}{2}$ " up.

8. Corrugated Asbestos Paper.

Materials so designated shall consist of a flat sheet of asbestos paper to which is attached by silicate of soda or other suitable adhesive, a corrugated sheet of asbestos paper of either approximately $\frac{1}{4}$ ", $\frac{1}{8}$ " or $\frac{1}{16}$ " depth of corrugation and shall be furnished in rolls of 250 and 500 square feet each, from 36" to $37\frac{1}{2}$ " wide.

9. Asbestos Paper and Rollboard.

Materials so designated shall include all paper whose chief constituent is asbestos fibre.

10. Wool Felt Paper.

Materials so designated shall include all paper whose chief constituent is wool or rag fibre.

11. Sponge Felt Paper.

Materials so designated shall include all paper whose chief constituent is asbestos and sponge fibres.