PLAINTIFF'S EXHIBIT MGC-27

McGRAW CONSTRUCTION COMPANY, INC. / ENGINEERS & CONSTRUCTORS

MEMORANDUM

CONT. NO.

DATE: November 2, 1988

TO: Coy Purcell

FROM: C. J. Ryburn

SUBJECT: **OSHA CITATION**
ARMCO MIDDLETOWN MAINTENANCE CONTRACT

In response to your memo of October 13, 1988, I offer the following answers to the questions of responsibility concerning the OSHA citation for asbestos related work at Armco, Middletown.

(a) McGraw's responsibility to investigate the work area of all employees as it relates to asbestos has been established. We are responsible for this investigative action. We are somewhat restricted by Armco, supervision-wise and financially.

(b) McGraw did take reasonable steps to secure the necessary investigation, and it is my understanding that the investigation was properly conducted. Work continued as the investigation progressed. It is the type of repair project that requires refractory to be removed from the top of a pot or ladle. (It may be called a ladle since it moves on rails.) As the removal was taking place, tests were conducted and asbestos fibers were found. However, since McGraw did not have control of the supervision at the time the asbestos was found, no action was taken to provide the necessary protective systems.

(c) The sampling as performed was sufficient to provide the positive test result. That in itself is enough to trigger the actions required by the regulations.

(d) Armco has not denied responsibility for the penalty; however, they have not stated that they will bear the cost. This could be negotiable. No indemnification has been stated or implied.

Attached are copies of the particle analysis by Armco Research and the contractors work order for the work. Also attached are the daily payroll reports and summary report for the work order.

Enclosed you will find the Guide to Procedures and the Rules of Procedure for the formal hearing to be held with OSHA.

CJR/cao

cc: Harry B. Meran
D. H. Kramer
Mark Brewer
Bill Brewer

McGCon 2298

RECEIVED
OCT 17 1988

MEMO

TO Jack Ryburn

DATE October 13, 1988

FROM Coy W. Purcell

SUBJECT OSHA Citation

I was able to confirm with an OSHA expert that OSHA asbestos regulations place a duty on a contractor to investigate for the presence of asbestos in certain situations where there is a heat source and piping involved. Although McGraw should raise the argument that it had no duty to investigate the background of the Armco furnace, it is likely that the hearing will proceed on the basis that McGraw did have such a duty.

The question then becomes whether McGraw took reasonable steps to investigate. McGraw's argument that it took reasonable steps is based upon two factors. First, McGraw was informed that the furnace was relined in the past and no asbestos was used. Second, when material of questionable origin was encountered, it was sent for analysis, and McGraw was informed that the results were negative for asbestos. Mr. Brewer stated that OSHA's position at the informal hearing was that an industrial hygienist should have been used to take a more scientific or extensive sampling of suspect material. Was a more extensive sampling possible, or did work have to proceed before more material was uncovered to be sent for additional testing? Please explore this point with Mr. Brewer.

Has McGraw requested Armco to indemnify McGraw for the OSHA fines? If not, please let me know whether you would like me to raise this with Armco.

Coy W. Purcell

CWP/cp

cc: Harry B. Meran
David H. Kramer
Mark Brewer

ARMCO

September 23, 1988

CORRECTED COPY

To: Cindy Stewart
APOH - Middletown Works

From: D. J. Phillabaum

Subject: Particle Analysis

Seven samples were submitted to our lab from the #4 coatings line by Tom Lay to determine if asbestos fibers were present. None contained any identification. You submitted four samples for asbestos identification. The results are as follows:

8-02-88	T. Lay	1 sample submitted	-	contained no asbestos fibers
8-10-88	T. Lay	2 samples submitted	-	one positive, one negative
8-11-88	T. Lay	4 samples submitted	-	contains asbestos fibers
8-12-88	C. Stewart	081188-1	-	contains asbestos fibers
		081188-2	-	contains asbestos fibers
		081288-1	-	contains asbestos fibers
		081288-2	-	contains asbestos fibers

Donald J. Phillabaum
Research Biologist
Chemical Technologies
Research & Technology

DJP89/jh

Reference: Research Daybook 6223, pp 69, 72, 73

cc: C. C. Borland
E. D. Gregory - 680 Bldg.

McGCon 2300

FORM G-1110

30907

McGraw Jobs at Middletown Works - Contract No. 382

Job No. (ME) 30907

Date Opened 07-29-88

Armco Final Charge 282-9268-5234-0000

Plant Code 062

Project Description ..... #4 ALUMINIZE LINE POT BRICKWORK

Use this Charge for Material Purchased at ARMCO Stores.

282-9268-3101-0000

Use this Charge for Material Purchased at McGRAW Purchasing.

30907-5234-0000

Per Instructions of TOM LAY Extension No. 3714

BRIEF INSTRUCTIONS

ASSIST ARMCO MASONRY AT #4 ALUMINIZING LINE ON POT BRICKWORK

CC: V. Bell - McGraw
M. Hirsch - Armco
G. Looney - Armco
B. Brewer - McGraw
D. Collins - McGraw
C. Campbell - McGraw
T. Ponder - McGraw
T. LAY - ARMCO
M. BREWER - MCGRAW

Summary Labor Report for Contractor Release

30907 #4 ALUMINIZE LINE POT BRICKWORK Date 08-17-88

Date Worked..	Regular Hours	Premium Hours	COST.....
08-01-88	18.0	0.0	$361.88
08-02-88	174.5	43.1	$4,192.49
08-03-88	174.5	43.1	$4,192.49
08-04-88	174.5	43.1	$4,192.49
08-05-88	142.0	34.0	$3,394.31
08-06-88	21.0	10.5	$598.71
08-08-88	102.0	21.0	$2,369.22
08-11-88	71.0	35.7	$2,027.83
	877.5	230.5	$21,329.42

8 records listed.

Summary Labor Report for Contractor Release 30907 Date 08-01-88 Page No. 1

Date Worked..	Sect Detl	Craft Description...	C	Bdge	Regular Hours	Premium Hours	COST.....
08-01-88	2685-2340	0	C	0597	2.0	0.0	$39.06
08-01-88	2685-2340	0	C	0241	2.0	0.0	$39.06
08-01-88	2685-2340	0	C	0250	2.0	0.0	$39.06
08-01-88	2685-2340	0	C	0497	2.0	0.0	$39.06
08-01-88	2685-2340	0	C	0603	2.0	0.0	$39.06
08-01-88	2685-2340	0	C	0545	2.0	0.0	$39.06
08-01-88	2685-2340	0	C	0237	2.0	0.0	$39.06
08-01-88	2685-2340	0	C	0598	2.0	0.0	$39.06
08-01-88	2685-2340	0	F	2021	2.0	0.0	$49.40
	** -						
	2685-2340				18.0	0.0	$361.88
					18.0	0.0	$361.88

9 records listed.

Summary Labor Report for Contractor Release 30907 Date 08-02-88 Page No. 1

Date Worked..	Sect Detl	Craft Description...	C	Bdge	Regular Hours	Premium Hours	COST.....
08-02-88	2685-2340	0	C	0454	11.5	3.3	$283.87
08-02-88	2685-2340	0	C	0214	11.5	3.3	$283.87
08-02-88	2685-2340	0	C	0577	11.5	3.3	$283.87
08-02-88	2685-2340	0	C	0578	11.5	3.3	$283.87
08-02-88	2685-2340	0	C	0579	11.5	3.3	$283.87
08-02-88	2685-2340	0	C	0581	11.5	3.3	$283.87
08-02-88	2685-2340	0	C	0588	11.5	3.3	$283.87
08-02-88	2685-2340	0	C	0597	11.5	2.5	$269.50
08-02-88	2685-2340	0	C	0241	11.5	2.5	$269.50
08-02-88	2685-2340	0	C	0250	11.5	2.5	$269.50
08-02-88	2685-2340	0	C	0497	11.5	2.5	$269.50
08-02-88	2685-2340	0	C	0545	11.5	2.5	$269.50
08-02-88	2685-2340	0	C	0237	11.5	2.5	$269.50
08-02-88	2685-2340	0	C	0598	11.5	2.5	$269.50
08-02-88	2685-2340	0	C	0595	11.5	2.5	$269.50
08-02-88	2685-2340	0	F	2021	2.0	0.0	$49.40
	** -						
	2685-2340				174.5	43.1	$4,192.49
					174.5	43.1	$4,192.49

16 records listed.

Summary Labor Report for Contractor Release 30907 Date 08-03-88 Page No. 1

Date Worked..	Sect Detl	Craft Description...	C	Bdge	Regular Hours	Premium Hours	COST.....
08-03-88	2685-2340	0	C	0454	11.5	3.3	$283.87
08-03-88	2685-2340	0	C	0214	11.5	3.3	$283.87
08-03-88	2685-2340	0	C	0577	11.5	3.3	$283.87
08-03-88	2685-2340	0	C	0578	11.5	3.3	$283.87
08-03-88	2685-2340	0	C	0579	11.5	3.3	$283.87
08-03-88	2685-2340	0	C	0581	11.5	3.3	$283.87
08-03-88	2685-2340	0	C	0588	11.5	3.3	$283.87
08-03-88	2685-2340	0	C	0597	11.5	2.5	$269.50
08-03-88	2685-2340	0	C	0241	11.5	2.5	$269.50
08-03-88	2685-2340	0	C	0250	11.5	2.5	$269.50
08-03-88	2685-2340	0	C	0497	11.5	2.5	$269.50
08-03-88	2685-2340	0	C	0545	11.5	2.5	$269.50
08-03-88	2685-2340	0	C	0237	11.5	2.5	$269.50
08-03-88	2685-2340	0	C	0598	11.5	2.5	$269.50
08-03-88	2685-2340	0	C	0595	11.5	2.5	$269.50
08-03-88	2685-2340	0	F	2021	2.0	0.0	$49.40
	** -						
	2685-2340				174.5	43.1	$4,192.49
					174.5	43.1	$4,192.49

16 records listed.

McGCon 2305

Summary Labor Report for Contractor Release
30907 #4 ALUMINIZE LINE POT BRICKWORK Date 08-06-88 Page No. 1

Date Worked..	Regular Hours	Premium Hours	COST.....
08-06-88	21.0	10.5	$598.71
	21.0	10.5	$598.71

One record listed.

Summary Labor Report for Contractor Release 30907 Date 08-08-88 Page No. 1

Date Worked..	Sect Detl	Craft Description...	C	Bdge	Regular Hours	Premium Hours	COST.....
08-08-88	2685-2340	0	C	0597	14.0	3.0	$327.30
08-08-88	2685-2340	0	C	0241	14.0	3.0	$327.30
08-08-88	2685-2340	0	C	0250	14.0	3.0	$327.30
08-08-88	2685-2340	0	C	0497	14.0	3.0	$327.30
08-08-88	2685-2340	0	C	0545	14.0	3.0	$327.30
08-08-88	2685-2340	0	C	0598	14.0	3.0	$327.30
08-08-88	2685-2340	0	C	0595	14.0	3.0	$327.30
08-08-88	2685-2340	0	C	0214	2.0	0.0	$39.06
08-08-88	2685-2340	0	C	0588	2.0	0.0	$39.06
	** -				---	---	---
	2685-2340				102.0	21.0	$2,369.22
					==========	==========	==========
					102.0	21.0	$2,369.22

9 records listed.

Summary Labor Report for Contractor Release 30907 Date 08-11-88 Page No. 1

Date Worked..	Sect Detl	Craft Description...	C	Bdge	Regular Hours	Premium Hours	COST.....
08-11-88	2685-2340	0	C	0597	11.0	5.5	$313.61
08-11-88	2685-2340	0	C	0598	9.5	4.8	$271.75
08-11-88	2685-2340	0	C	0241	9.5	4.8	$271.75
08-11-88	2685-2340	0	C	0250	9.5	4.8	$271.75
08-11-88	2685-2340	0	C	0253	9.5	4.8	$271.75
08-11-88	2685-2340	0	C	0606	11.0	5.5	$313.61
08-11-88	2685-2340	0	C	0252	11.0	5.5	$313.61
	## -						
	2685-2340				71.0	35.7	$2,027.83
					71.0	35.7	$2,027.83

7 records listed.

Summary Labor Report for Contractor Release 30907 Date 08-04-88 Page No. 1

Date Worked..	Sect Detl	Craft Description...	C	Bdge	Regular Hours	Premium Hours	COST.....
08-04-88	2685-2340	0	C	0597	11.5	2.5	$269.50
08-04-88	2685-2340	0	C	0241	11.5	2.5	$269.50
08-04-88	2685-2340	0	C	0250	11.5	2.5	$269.50
08-04-88	2685-2340	0	C	0497	11.5	2.5	$269.50
08-04-88	2685-2340	0	C	0545	11.5	2.5	$269.50
08-04-88	2685-2340	0	C	0237	11.5	2.5	$269.50
08-04-88	2685-2340	0	C	0598	11.5	2.5	$269.50
08-04-88	2685-2340	0	C	0595	11.5	2.5	$269.50
08-04-88	2685-2340	0	C	0454	11.5	3.3	$283.87
08-04-88	2685-2340	0	C	0214	11.5	3.3	$283.87
08-04-88	2685-2340	0	C	0577	11.5	3.3	$283.87
08-04-88	2685-2340	0	C	0578	11.5	3.3	$283.87
08-04-88	2685-2340	0	C	0579	11.5	3.3	$283.87
08-04-88	2685-2340	0	C	0581	11.5	3.3	$283.87
08-04-88	2685-2340	0	C	0588	11.5	3.3	$283.87
08-04-88	2685-2340	0	F	2021	2.0	0.0	$49.40
	** -						
	2685-2340				174.5	43.1	$4,192.49
					174.5	43.1	$4,192.49

16 records listed.

No records meeting selection criteria found on the DATA.30907 File.