



Executive Committee

*J. F. Welch*  
J. F. Welch, Director, Public Affairs

July 6, 1981

PAC-04-81, State Monitoring Program (SMP)

REF: Board of Directors meeting minutes, April 16, 1981

**ACTION REQUIRED:** Review for (a) discussion at Executive Committee meeting, July 16, 1981 and (b) approval/disapproval via letter balloting by August 6, 1981.

Enclosed is a proposal for a program which would coordinate the monitoring and industry response to state legislative, administrative or judicial actions which might impose limitations on the use of A/C pipe.

Recommendation/Selection of Special Counsel

AACPP counsel recommended the below-listed firms. Staff conducted preliminary discussions regarding the problems of the A/C pipe industry and the capabilities of each firm to address those problems.

|            |                                                                                                                                  |
|------------|----------------------------------------------------------------------------------------------------------------------------------|
| Arizona    | Brown & Bain<br>Offices in Phoenix<br>Contact: Paul Eckstein, Esq.                                                               |
| California | Winner & Wagner<br>Offices in Sacramento and Los Angeles<br>Contact: Ethan Wagner                                                |
| Nevada     | McDonald, Carano, Wilson, Bergin, Bible, Frankovitch & Hicks<br>Offices in Reno and Las Vegas<br>Contact: John Frankovitch, Esq. |
| Texas      | Brown, Maroney, Rose, Baker & Barber<br>Offices in Austin<br>Contact: R. Kinnon Goleman, Esq.                                    |

Staff intends to meet personally with all these firms as well as additional candidates. Final selection would be made by Staff.

Budget Level

The legislatures of all core market states, except California, have adjourned for 1981. All will convene for 1982 sessions in January 1982. Thus, the 1981 budget estimates include costs for regulatory agency monitoring in Arizona, California, Nevada and Texas, and legislative monitoring for California only.

1982 budget figures include legislative and regulatory monitoring services plus "first tier" lobbying services i.e. educational or pre-crisis lobbying with key committee staffs and legislators who have introduced or plan to introduce relevant legislation.

Once a bill is heard and reported out of committee, the candidate firms envision the need for a "second tier" lobbying effort. This would, by necessity, be broader in scope, more time intensive and more costly. Since AACPP's historical approach to stopping legislation is to kill the bill in committee, Staff recommends that the program be funded on such a basis. It is recommended that "second tier", major legislative or regulatory problems be funded by special assessment, as in past cases.

#### Expansion of Monitoring Services

The Board of Directors asked that the legislative/regulatory monitoring and response network cover those states of greatest marketing significance to the industry. However, it is Staff's view that the states which use the largest amounts of A/C pipe are those which are least likely to take precipitous legislative or regulatory action against the product. Moreover, as past field problems in Connecticut, Massachusetts, New Jersey and Virginia suggest, legislative or regulatory action in non-critical states clearly has the potential to adversely impact the industry elsewhere in the U.S. or the world.

Routine monitoring of the other 46 states would eliminate the possibility of these potentially dangerous "slip throughs." This can be effected at a reasonable cost with little additional workload on Staff. Therefore, it is recommended that the legislative/regulatory monitoring portion of the program encompass all 50 states. In the event that AACPP intervention is required to address a legislative or regulatory issue, special counsel would be retained on an ad hoc basis.

If you have any questions, please do not hesitate to call.

JFW/ajb

cc: A. Kahn, Esq.  
N. Rahn, Esq.  
N. Battle (L&G)  
I. Adams (ATI)

copies to: Executive Committee

L. Ambler  
J. Cran  
L. Taylor

HEGA/2-3  
Chrono

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| PUBLIC<br>AFFAIRS<br>PROGRAM                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Number  | PAC-04 - 31 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Issued  | 4-9-81      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Revised | 7-7-81      |
| Title STATE MONITORING PROGRAM                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |         |             |
| <h3>Background</h3> <p>This program would coordinate the monitoring and industry response to state legislative, administrative or judicial actions which might impose, directly or indirectly, limitations on the use of A/C pipe.</p> <p>AACPP's current strategy is to use the monitoring programs of the Asbestos Information Association/NA and Johns-Manville Corp. (Washington Office) to identify legislation which might adversely affect the industry. When such situations arise, Staff investigates the proposed legislative action, makes an initial determination regarding its present or potential seriousness, and recommends and executes an appropriate action plan. In consultation with member companies and AACPP Counsel, the need for special counsel or other professional assistance is defined.</p> <p>While the existing monitoring and response protocol have been effective in managing anti-A/C pipe legislation, it does not effectively monitor administrative and regulatory actions. The transfer of enforcement of environmental, health and safety laws to state authorities, as a part of redirecting federal regulation, creates the potential for increased legislative or administrative action. Continued publicity about the health hazards of asbestos, "knee-jerk" political reaction to public health policy issues, and precedents at the municipal and state government levels e.g. Chesapeake, Virginia and Connecticut, could accelerate state legislative or regulatory action.</p> <p>There is a need to put into place a monitoring and response network which would safeguard A/C pipe industry interests in core market areas. The network would be comprised of special counsel which would coordinate with AACPP Staff and Counsel in the development and execution of appropriate counter initiatives.</p> |         |             |
| <h3>Objective</h3> <p>To implement a legislative/regulatory monitoring and response network in California, Texas, Arizona and Nevada.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |         |             |

## *Tactics & Tasks*

### 1. Program Initiation

Identify and rank states of greatest marketing significance to the industry.

### 2. Identification of Special Counsel

After consultation with Association counsel and member companies, undertake to identify special counsel or other professional consultants or advisors with experience in asbestos and health, environmental issues or water utility construction/operation. Recommendations also would be sought from other trade associations e.g. Chemical Manufacturers Association, National Utility Contractors Association, Associated General Contractors, etc.

### 3. Retention of Special Counsel

After interviewing by Staff and Counsel, AACPP will retain special counsel on negotiated terms, subject to approval by Executive Committee.

#### A. Briefing

Special counsel, consultants and advisors will be fully briefed regarding the asbestos-related health issues and the industry's position on these issues. They also will be provided pertinent material regarding the Association and the industry that has been prepared by AACPP Staff and the Association's public relations advisors, Lewis & Gilman.

#### B. Responsibilities - Special Counsel

It will be the responsibility of such counsel, consultants and advisors to keep advised on a current basis, of legislative and regulatory activities in their respective states, to promptly advise AACPP Staff of any initiatives or potential problems relating to the industry, and to assist Staff in the development and execution of counterinitiatives.

#### C. Financial Arrangements

Hourly rates and/or other financial arrangements will be agreed to in advance following consultation between Association counsel and AACPP Staff. AACPP will be billed monthly for fees and disbursements, unless other special arrangements are agreed to by AACPP Staff. All bills for professional services will be forwarded to AACPP, with a copy to AACPP counsel. AACPP counsel will review and approve all statements before they are processed for payment.

### 4. Role of Special Counsel in Regulatory and Court Proceedings

As recommended by AACPP counsel and approved by Executive Committee.

### 5. Conduct of Agency Hearings and Litigation

As recommended by AACPP counsel and approved by Executive Committee.

*Schedule*

| <i>Task</i>                                                                                | <i>Elapsed Time-Quarters</i> |     |     |     |     |     |     |   |
|--------------------------------------------------------------------------------------------|------------------------------|-----|-----|-----|-----|-----|-----|---|
|                                                                                            | 1                            | 2   | 3   | 4   | 5   | 6   | 7   | 8 |
| <u>Task 1</u><br>Program Initiation                                                        | □□□                          |     |     |     |     |     |     |   |
| <u>Task 2</u><br>Identification of Special Counsel                                         | □□□                          |     |     |     |     |     |     |   |
| <u>Task 3</u><br>Retention and Briefing of Special Counsel                                 |                              | □□□ | □□□ | □□□ | □□□ | □□□ | □□□ |   |
| <u>Task 4</u><br>Definition of Role in Special Counsel in Regulatory and Court Proceedings |                              | □□□ |     |     |     |     |     |   |
| <u>Task 5</u><br>Development of Format for Conducting Agency Hearing and Litigation        |                              | □□□ |     |     |     |     |     |   |
| Staff Updates                                                                              |                              |     | ○   | ○   | ○   | ○   | ○   | ○ |

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| Estimated Costs      |                                                                 | Implementation Developmental |             |          |          |   |   |          |
|----------------------|-----------------------------------------------------------------|------------------------------|-------------|----------|----------|---|---|----------|
| Required Input       |                                                                 |                              |             |          |          |   |   |          |
| 1.                   | AACPP Staff Travel                                              |                              |             |          |          |   |   |          |
|                      | A. Interviewing of Candidate Counsel (1981)                     | \$2150                       | \$ 2,400    |          |          |   |   |          |
|                      | B. Counsel Management (1982)                                    |                              |             |          |          |   |   |          |
| 2.                   | Special Counsel Briefing (1982)                                 |                              | \$12,000    |          |          |   |   |          |
| Planned Output       |                                                                 |                              |             |          |          |   |   |          |
| 1.                   | Special Counsel Fees                                            | <u>1981</u>                  | <u>1982</u> |          |          |   |   |          |
|                      | A. Arizona                                                      | \$2500                       | \$7500      |          |          |   |   |          |
|                      | B. California                                                   | \$4500                       | \$18,000    |          |          |   |   |          |
|                      | C. Nevada                                                       | \$2000                       | \$7500      |          |          |   |   |          |
|                      | D. Texas                                                        | \$2500                       | \$10,000    |          |          |   |   |          |
| 2.                   | Legislative/Regulatory Monitoring Service (46 remaining states) |                              |             |          |          |   |   |          |
|                      |                                                                 | <u>1981</u>                  | <u>1982</u> |          |          |   |   |          |
|                      |                                                                 | \$1750                       | \$5000      |          |          |   |   |          |
|                      |                                                                 |                              | \$ 6,750    |          |          |   |   |          |
| Cash Flow - Quarters |                                                                 |                              |             |          |          |   |   |          |
| 1                    | 2                                                               | 3                            | 4           | 5        | 6        | 7 | 8 |          |
| \$2150               |                                                                 |                              |             |          |          |   |   | \$2150   |
| \$6625               | \$6625                                                          | \$24,000                     | \$12,000    | \$14,400 | \$12,000 |   |   | \$75,650 |
| \$8775               | \$6625                                                          | \$24,000                     | \$12,000    | \$14,400 | \$12,000 |   |   | \$77,800 |