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NATIONAL ASSOCIATION OF MANUFACTURERS

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March 12, 1980

Carol Roth, Esquire
Office of the General Counsel
Consumer Product Safety Commission
1111 - 18th Street, NW
Washington, D.C. 20207

Dear Ms. Roth:

Re: General Order for Submission of Information of Consumer Products Containing Asbestos

This letter is in response to our telephone conversation of Friday, March 7, 1980, regarding the above-captioned general order. This letter is intended to highlight the concerns that the National Association of Manufacturers, on behalf of its members, feels should be considered by the Consumer Product Safety Commission in issuing a general order.

The first inquiry concerns the appropriateness of the general order at this time. On February 18, 1980, the comment period closed for the submission of comments on the Advance Notice of Proposed Rulemaking for Consumer Products Containing Asbestos. It would appear that the CPSC via the ANPRM is investigating the necessity of regulating asbestos and is soliciting information to guide the Commission in any regulatory approach that will be taken. Given the recent submissior of data from interested parties, it would appear that the general order is premature when the Commission has not had an opportunity to fully digest the data submitted from the ANPRM. One would have to challenge the necessity and relevance of the massive amount of information requested in the draft general order when viewed in context of the recent responses to the ANPRM.

A second concern involves the time period for submission of information to the general order. Our information is that the Commission has considered a 60 day time period to respond. Given the magnitude of the information requested, 60 days is not enough time to compile the plethora of data to meet the requisites of the general order. This point was amply described in a letter addressed to

Chairman King on February 19, 1980, from Martin Connor of the General Electric Company. Hence, the Commission should more realistically assess the amount of time necessary to comply with the general order.

The scope of the general order is also somewhat problematic. The scope of the order should more accurately define the extent of coverage the Commission presumes the order to cover so as to dispel any questions of who must respond.

We are also concerned with the vast amount of information required to be furnished. An effort should be made to reduce the requisite information to the use of asbestos in products specified by the manufacturer as there will be instances where products are purchased without the knowledge of whether the product contains asbestos or not. Consideration should be given to products where there would be no asbestos emission such as where fibers are encapsulated. This would be preferable than to a broad brush request with no deference given to the emission levels of asbestos in given products.

Another important concern is the confidentiality of the information to be submitted. The commission is requesting a vast amount of sensitive production data. The draft general order does provide minimal reference to trade secret or confidential information. Needless to say, this sensitive data must be given the utmost protection and assurances from the Commission. In the draft general order there is a reference that in accordance with Section 6(b)(1) of the CPSA the manufacturers and private labelers are invited to submit a written comment concerning any public release of the information when they respond to the general order. This does not appear to be in compliance with the language of the Act. Rather, prior to any disclosure by the Commission, it is the burden of the Commission to inform the individual of the release of any of the data 30 days prior to disclosure to permit the manufacturer or labeler to come forward with relevant information for the Commission's consideration. Under no circumstances can we consider this provision in the general order acceptable.

The draft general order refers to criminal penalties for failure to respond to the order. Criminal penalties can only attach after notification by the Commission of noncompliance. This makes it even more imperative that the scope of the general order and adequate notice be given to define the respondents.

We are greatly concerned that the Commission has not taken sufficient time or analysis in contacting affected parties to determine the best and most effective approach to the general order. In reviewing the draft general order the problems became painfully obvious in assessing the amount and detail required to respond to the general order on the heals of the comment period of the ANPRM. We also question the appropriateness of this information requested

with little or no representation that any amount of testing has already been done by the Commission on which to predicate such a massive effort by the manufacturers of consumer products containing asbestos. Before the Commission requires such extensive testing on the long list of products in the general order, the Commission should determine from its own testing data the necessity of listing any specific product. In the draft general order, under the supporting statement, reference is made to a large body of scientific evidence concluding that all major types of asbestos are carcinogenic. This presumption is at this point an unwarranted conclusion by the Commission, particularly in view of the information to be assessed from the ANPRM and in view of the request in the general order of testing results from the respondents. Although we do not deign to enter the scientific arguments on asbestos, we must at this juncture challenge the presumption that there is a foregone conclusion that all asbestos is carcinogenic.

Of paramount importance to the manufacturers is more limited scope of the general order, assurances of the protection of mass amounts of confidential and proprietary information, and sufficient time to respond. No one is interested in another hair dryer incident which basically was a trial by the media with little opportunity for manufacturers to refute the information disseminated to the public. Rather, a more reasoned approach to any regulation of asbestos is imparative to forestall any unwarranted hysterical reaction to the use of asbestos in consumer products. This is particularly true in incidents where there is no emission of asbestos from the product. We believe the Commission is better served to assess the appropriate action to be taken by a careful review of comprehensive comments submitted in the ANPRM and if additional data is required, at that time a general order would be appropriate. The order, in its draft form, goes beyond the type of information required in assessing the regulatory approach to be taken by the Commission.

Thank you for the opportunity for submitting this letter, and I look forward to an opportunity to discuss it in person if convenient. Your cooperation is appreciated.

Very truly yours,

Jan S. Amundson

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Assistant General Counsel

JSA:mlc