PLAINTIFF'S EXHIBIT

CAP-1061

A/C Pipe
Producers Association
Board of Directors
International Affairs Committee

J. F. Welch
J. F. Welch, Vice President

RECEIVED
MARKETING
CAPCO

Internal Correspondence

PRIORITY MATTER

February 1, 1983

SUBJECT: State of California - Requirements for Material Safety Data Sheets (MSDS) for A/C Pipe

REF: Regulatory Affairs,. Field Problems and Asbestos Research Report, October 8, 1982

ACTION REQUIRED (Board of Directors Only): Review and comment by February 10, 1983

Background

In 1980, the California State Legislature passed into law The Hazardous Substances Information and Training Act (enclosed). The bill was one of the earliest legislative embodiments of the "workers' right to know" movement. The state of New York passed the first "right to know" law in June, 1980. California followed and since then, Connecticut, Wisconsin, Oregon, West Virginia, Maine, Michigan and a number of municipalities have passed comparable bills that are in various stages of enactment. The purpose of these laws is to make employees and other persons aware of the properties and potential hazards of substances to which they might be exposed and which might pose potential acute and chronic health hazards to them.

Requirements of the Act

The Hazardous Substances Information and Training Act goes beyond conventional "right to know" laws. It requires manufacturers and "any person other than a manufacturer who sells a mixture or any hazardous substance" to provide material safety data sheets (MSDS) to their "direct purchasers," and upon request provide "any employer, whose employees may be exposed to its (the manufacturer's) product in the workplace." Employers that receive MSDS are required to have them available for employees, their collective bargaining representatives or personal physicians. Employees who may be exposed to a hazardous substance must be furnished the contents of the MSDS or equivalent information in written form or through training programs implemented by their employers.

The Hazardous Substances List

The Act first required the Department of Industrial Relations, which oversees the Division of Occupational Safety and Health (CAL/OSHA), to prepare a list of hazardous substances. The list was proposed in April, 1981 and, to no one's surprise, included asbestos and silica, and mixtures containing them. AIA/NA submitted comments in May, 1981, February, 1982 and May, 1982 requesting that encapsulated and locked in asbestos containing products, such as A/C pipe, be excluded from the list. It was argued that these products met the Act's exemption criteria i.e. they were "substances, mixtures or products ... in a physical state, volume or concentration for which there is no valid and substantial evidence that any adverse acute or chronic risk to human health may occur from exposure."

The Department of Industrial Relations and the CAL/OSHA Standards Board did not accept this, reasoning that asbestos is a human carcinogen requiring MSDS preparation "at the lowest detectable concentration level." Although the list was amended, only coatings and laminating resins containing asbestos, cold process asphalt roof coatings and non-friable encapsulated products such as floor tiles were excluded from the provisions of the Act.

The Standards Board approved the Final Hazardous Substance List on June 24, 1982 and it cleared the Office of Administrative Law in August, 1982.

Applicability to A/C Pipe Manufacturers

A/C pipe manufacturers, distributors and other sales agents in or outside of California that sell A/C pipe to "direct purchasers" must provide MSDS to those purchasers. For manufacturers, there are no time limitations on providing MSDS; it simply must commence on February 21, 1983. It also is the manufacturer's duty to make available, upon request, an MSDS to any employer whose employees may be exposed to asbestos dust from A/C pipe field operations.

For distributors or other direct sales agents, the law requires providing the MSDS or its equivalent at the time of sale.

The law does not specify how manufacturers should provide MSDS to purchasers. The obvious options are (1) a separate direct mailing and (2) inclusion in shipping papers, bills of lading, invoices, etc. at time of purchase or delivery.

Preparation of MSDS for A/C Pipe

Since January, 1982, AACPP agreed to cooperate with AIA/NA in the preparation of an MSDS for A/C pipe. At that time, the AIA/NA Technical Committee had an ongoing effort to develop standard MSDS for major product sectors of the asbestos industry. However, CertainTeed Corporation withdrew from AIA/NA and with the recent sale of the Johns-Manville Corporation, CAPCO and Atlas are the only A/C pipe producers remaining in AIA/NA. More importantly, Staff was advised recently by AIA/NA that its Technical Committee did not successfully move forward with the preparation of MSDS for A/C pipe or other products at its September or December 1982 Technical Committee meetings.

There is a need, therefore, to develop MSDS for asbestos and silica in A/C pipe and have them available for distribution by February 21, 1983. Although AACPP member companies may prepare their own MSDS, Staff recommends that standard MSDS be prepared. Counsel advises that there are no legal constraints on such an effort. Morever, there clearly are benefits to standard MSDS that do not invite unnecessary questions, confusion or comparisons.

Current Status - Draft MSDS

Enclosed are draft MSDS for the asbestos and silica components of A/C pipe. They are prepared on a federal Occupational Safety and Health Administration (OSHA) Form 20 Material Safety Data Sheet which, as provided by the Act, "shall constitute prima facie proof of compliance with Section 6390" (Providing information to purchasers).

CAPCO JEN 0024083

Action Required

Please review the drafts with corporate counsel and medical staff and submit suggestions for revisions no later than February 10, 1983. Staff and Counsel will reconcile differences of opinion and issue a final MSDS no later than February 14, 1983.

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

JFW/ajb

Enclosures

cc: A. Kahn, Esq.
J. Woods (ASARCO)

copies to:

Board of Directors

L. Ambler
J. Cran
L. Taylor
L. Cejudo
W. Gallant

International Affairs Committee

E. van der Rest
L. Giannitrapani
A. Saoulis
R. Jalan
C. Barton
M. Delcourt
B. Giboin
J. Schmaus
Dubuc

R. Dorner
P. Hart
S. Al-Tarkait
V. Pattabhi
H. Hudson
J. Cuvelier
G. Zaviezo
J. Rodrigues
Dimatit

CAPCO JEN 0024084