

SAFETY &
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November 21, 1979

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Dear Dick:

On behalf of our client, the Asbestos Information Association/North America ("AIA/NA"), I would like to thank you and members of the EPA staff for taking the time to meet with us on November 13, 1979. Although we appreciated your candor in discussing EPA's plans in connection with the Asbestos Fibers Advance Notice of Proposed Rulemaking ("ANPRM"), we were deeply disturbed by EPA's apparent inflexibility and unwillingness to extend its December 17, 1979 comment deadline, especially given the admittedly enormous practical obstacles that confront AIA/NA in attempting to respond meaningfully to EPA's sweeping ANPRM.

In the past, AIA/NA has consistently cooperated with the EPA staff in providing useful information pertaining to possible regulation of asbestos products. During the past year alone, AIA/NA submitted written comments and met with EPA staff members on May 30, 1979, to discuss the IIT Research Institute Report on Exposure to Asbestos. Again on June 18, 1979, AIA/NA representatives met with EPA staff to discuss technical information and consumption use data. And, on August 8, 1979, AIA/NA arranged for a medical seminar concerning asbestos presented by Drs. Weiss and Wright at EPA headquarters. AIA/NA also arranged for industry representatives to meet with the EPA staff on July 18 and November 16, 1979, to share their expertise regarding safer work practices to be followed by auto mechanics in repairing and replacing brake linings.

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Because of this consistent record of cooperation, AIA/NA expected a favorable response to its request that the ANPRM deadline be extended for a short period in order to allow AIA/NA and its members adequate time to respond meaningfully to the lengthy and comprehensive list of information that EPA has requested.

As we explained at the meeting, EPA's 60-day deadline, expiring December 17, 1979, is wholly inadequate for development of the data requested by EPA. The lengthy list of data requested by EPA (44 Fed. Reg. 60066-68) covers virtually all documentation relating to all aspects of the many, varied asbestos product lines. Such information, needless to say, is not neatly arranged in easily accessible files maintained by AIA/NA member companies. Merely to ascertain what information exists and to put it in useful form would require enormous efforts by many companies. Clearly this cannot be accomplished by December 17, 1979.

Moreover, once the existence of such information is determined, serious confidentiality problems must be confronted before the information can be transmitted to EPA. For example, the ANPRM seeks information relating to industry research and development, economic planning and capital expenditure forecasts -- all of which information is closely guarded within each company and which could be released only upon an enforceable guarantee that its confidentiality will be strictly respected and maintained.

As we indicated at our meeting, a minimum extension of 120 days would be required in order for AIA/NA and its members to resolve these problems and to respond meaningfully to the ANPRM. Even when we suggested a compromise extension of 60 days to allow for further discussions of the problems outlined above, you were unwilling to consider such a request unless AIA/NA would make a firm commitment to deliver a large, unidentified volume of information by a date certain. But as already discussed, the inordinate burden on AIA/NA member companies that would be required simply to ascertain what information is available precludes any such commitment.

EPA's unwillingness even to consider an extension of its December 17, 1979 deadline unless AIA/NA makes a

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definite, affirmative promise of information deliveries -- even before we have the time to assess exactly what information is available and before the multitude of confidentiality problems pertaining to such information can be assessed -- is greatly disturbing. As we understand the purpose of advanced notices of proposed rulemakings, EPA is supposedly at an early stage in the regulatory process when it continues to seek information and remains receptive to alternative proposals for action or non-action. In our meeting of November 13, however, we sensed that the EPA staff already has firmly in mind its plan of action for asbestos fiber regulation and seeks AIA/NA input only to buttress its preconceived plans.

If, as it now appears, the EPA staff has little intention of seeking information other than to buttress its case against asbestos products, it may be questioned whether continued cooperation will serve the interests of any party. But, if the EPA staff wishes to maintain an open mind toward the proposed rulemaking, as would be evidenced in extension of the December 17 deadline as we suggested at our meeting, AIA/NA and its members would be willing to continue their previous voluntary efforts and to take such steps as may be necessary to improve EPA's understanding of the asbestos industry.

Sincerely yours,

Edward W. Warren

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