PRESENTATION TO THE OSHA ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH IN REGARD TO THE PROPOSED STANDARD FOR OCCUPATIONAL EXPOSURE TO ASBESTOS IN THE CONSTRUCTION INDUSTRY

January 21-22, 1976

On behalf of

UNION CARBIDE CORPORATION

Date Submitted

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Submitted By:

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"Calidria" Asbestos

My name is John L. Myers and I am marketing manager for the Union Carbide Corporation's "Calidria" Asbestos Products. Union Carbide is actively engaged in the mining and milling of asbestos ore at a plant in California, and markets short-fiber asbestos throughout the United States and many foreign countries. Union Carbide is a major supplier of asbestos for the manufacture of floor tile, of tape joint compounds used in drywall finishing, and of products used for wall and ceiling texture sprays. We also supply fiber to about three hundred manufacturers of caulks, sealants, coatings, adhesives, mastics and similar materials that are widely used in the construction industry. We do not supply the type of asbestos used for cement, fireproofing, or insulation products.

We were privileged to present comments before your committee at the public hearings in Washington on September 17 and 18, 1975. The proposed standard for the construction industry that resulted from those hearings appears, in most respects, to be a realistic and workable regulation and has our endorsement. However, as we are all aware, OSHA published, on October 9, 1975, a proposed new rulemaking on Occupational Exposure to asbestos. This proposal suggests sharp reductions in the allowable exposure levels and greatly expands several other employer obligations. Of equal importance, a number of the constructive changes that had been incorporated in your Advisory Committee draft proposal are not included in the new rulemaking.

We would like to take this opportunity to offer general comments on six of the seven specific areas on the agenda for this meeting. No position will be taken on the revised allowable fiber level pending completion of a comprehensive medical review now in progress by the Asbestos Information Association/North America. It is also assumed that OSHA will conduct an in-depth Technical Feasibility and Economic Impact study for the construction

industry, similar to the one now being made by Consad for the industries covered in the proposed rulemaking. No attempt will be made to give quantitative estimates on this subject. Such a study is particularly important, however, since about 70% of the asbestos used in the United States ends up in construction. Since such a large fraction of all asbestos is used by the construction industry, the economic impact study being conducted by Consad will not fairly represent the impact of these stringent proposals on industry. Whether or not OSHA decides to continue with the approach of having some vertical standards or consolidates all considerations in a broad horizontal standard the economic impact on the construction industry must be addressed in detail. Since Consad has specifically excluded an evaluation for this industry, a separate study is obviously required. It seems appropriate to defer any decision on consolidation of the construction industry with a broad horizontal standard until the Impact and Feasibility information is available.

Before commenting on the specific paragraphs, it is suggested that a clear definition of "construction industry" is urgently needed if different standards are to be applied to this industry. Questions to consider in formulating such a definition include:

1. Is the installation of asbestos containing materials such as gaskets or brakes on heavy equipment used in the building industry considered as "construction"?
2. Is a warehouse handling building materials considered as "construction"?
3. Are routine maintenance and repair on buildings considered as "construction"?
4. Is boat building "construction"?
5. Is demolition of buildings considered as "construction"?
6. Are other trades with high levels of transient labor, such as well drilling, covered by the construction standards?

(d) Regulated Areas

The proposed rulemaking introduces the new concept of the "regulated area" into the asbestos standard. A regulated area is defined as any work area where a person may be exposed to concentrations of asbestos in excess of the allowable limits. The regulated area carries with it the additional obligations of warning signs, access limited to authorized persons only, a daily attendance roster, an employee training program, certain change rooms and lavatory facilities, and certain prohibited activities in the area such as smoking and eating. Several of these requirements also have extensive recordkeeping obligations.

The key problem with this definition comes from the hypothetical situation that results from the "may be exposed" wording. In almost any place where asbestos fiber is used there is a possibility of an occasional exposure over the allowable limits. The extensive burden of establishing and maintaining a regulated area will be almost universal whether or not there is any real possibility of regular exposure over the allowable limits. It is suggested that the definition of regulated areas be clarified to cover any work area where the airborne concentrations of asbestos fibers are regularly in excess of either of the allowable limits. With this change the concept serves the purpose of preventing accidental over-exposure and becomes more manageable for fixed places of employment as well as transient work sites typical of the construction industry.

Although general comments on "recordkeeping" will be made later, it is important to note here that the proposed rulemaking calls for a daily roster of all persons entering a regulated area. Apparently, this is intended to compile a very detailed exposure record for medical research purposes. Unfortunately the other variable needed, the airborne fiber concentration, can be expected to vary widely from day-to-day and is only measured once every three months. Even if a roster is kept there is no way to check its accuracy or record levels of exposure. We feel that this requirement is the ultimate in excessive and useless recordkeeping and should be dropped.

(f) Methods of Compliance

The present regulations require the use of engineering controls and work practices to achieve compliance, but permit the use of respirators when compliance by such methods is technically infeasible. The proposed rulemaking makes engineering controls supplemented by work practices mandatory whether or not it is technically feasible to achieve compliance by this route. The new approach, which ignores economic considerations, can be seriously questioned for fixed places of employment and is clearly unworkable in the construction industry. We feel that the less restrictive wording now in the construction industry proposal should be retained. Specifically the following wording is recommended:

> (i) Engineering controls. Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in paragraph (b) of this section.
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> IV. Where engineering controls or wet methods, as defined herein, are not practicable, personal protective equipment shall be used in accrodance with Subpart E of this part.

As an added point for consideration, the respirator manufacturers have, in the past several years, developed several new single-use or disposable respirators that have been certified as acceptable by OSHA for concentrations up to 10 times the allowable limits. These respirators cover only the mouth and nose, are very light, and are reasonably comfortable to wear. It is suggested that the use of such respirators within their certified concentration limits should be an accepted alternate to engineering controls and work practices to protect the worker in the exposure conditions characteristic of your industry. Limitations on the maximum time of continuous and cumulative use in any 8-hour shift could be included. Disposable coveralls could also be used to keep the hygiene facility requirements at construction sites within reasonable bounds.

(h) Personal Protective Clothing

The present regulations require special clothing when exposures exceed the ceiling level. The proposed rulemaking expands the requirement to also include exposures exceeding the TWA. The concept of whole body covering is present in both regulations.

Asbestos is not known as a skin irritant beyond that which may be experienced from any nuisance dust and has never been shown to enter the body through the skin. The function of protective clothing is not to prevent fiber contact with the skin but to provide the worker with in-plant outer clothing which he does not take home. It is suggested that the "whole body clothing" concept should be dropped as unnecessary. The ceiling level exposure requirement in the present Advisory Committee proposal seems realistic and should be retained. Specifically:

> (3) Special clothing: The employer shall provide, and require the use of, special clothing, such as coveralls
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> and foot coverings for any employee exposed to airborne concentrations of asbestos fibers, which exceed the ceiling level prescribed in paragraph (b) of this section.

(j) Medical Surveillance

One of the major problems with the present OSHA standard has been the lack of any cut-off level below which medical examinations are not required and the attendant confusion over which employees must have such examinations. The same wording has been used in the proposed rulemaking.

The problem was brought clearly into focus by a recent OSHC ruling[1] that medical examinations were required "for all employees engaged in occupations exposed to airborne concentrations of asbestos fibers, regardless of levels of exposure" and the dissenting opinion filed by Commissioner Moran:

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[1] GAF Corporation and United Engineers and Constructors, Inc., 3 OSHC-1687.

"[I]t is estimated that three to five million workers are exposed to some extent to asbestos fibers in the building construction and shipyard industries alone."

"From this day forth, the Commission decision requires annual physicals for millions of employees who, this decision concedes, are not exposed to any hazard whatsoever. The consequences of this upon the employees and employers of America will be astonishing. Its impact upon the medical profession-and even the economy-could be considerable. In my view, such a construction of the standard is utopian and clearly unreasonable."

The 3-5 million figure quoted from the IUD, AFL-CIO v. Hodgson decision is probably just the tip of the iceberg when all of the other possible random low-level exposures throughout industry are taken into account. The number of annual medical examinations mandated becomes even more overwhelming when it is considered that such examinations are also an established part of an extensive series of similar regulations for other substances now being promulgated by OSHA. At the most recent ACGIH meeting in Cincinnati it was estimated that those regulations would require annual examinations for approximately 20 million workers. These would have to be supplied by an already overburdened medical community of 350,000 doctors, only 1700 of which are actively engaged in industrial medicine. The need to be selective in who must be examined is obvious. In view of this, it is critical that the requirement for medical examinations be retained as now written in your recommended asbestos standard.

(m) Housekeeping

The present wording requires that any place of employment shall be maintained free of accumulations of asbestos fibers, if with their dispersion, concentrations in excess of the exposure limits would result. The words "if with their dispersion" are vague and deal with speculation rather than fact. If they are dispersed by the operation and the concentrations exceed the limits,

it is a violation. If they are not actually dispersed there is no way to make a factual determination as to what might happen if they were. Any citation depends entirely on the guess of the inspector. It is recommended that this section be deleted.

(n) Recordkeeping

Each new version of the OSHA regulations adds increasing burdens of paperwork. This is currently being studied by the Commission on Federal Paperwork and the following two quotations from their Work Statement are particularly relevent:

> "Any information obtained by the Secretary (of Labor), the Secretary of Health, Education and Welfare, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible." Section 8(d) of OSH Act. (Emphasis added.)
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> "National Consensus and Federal Standards, formerly guidelines for implementing voluntary programs, gained the force of law as OSHA rules and regulations. Revision of these rules has not eliminated inconsistent recordkeeping requirements or unnecessary rules which appear to have little relationship to the health or safety of employees." (Emphasis added.)
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> "This is true especially for the reporting and recordkeeping requirements under the proposed standards; expanded to a point where OSHA compliance officers would have little trouble enforcing compliance, these extensive requirements fly in the face of Section 8(d) of OSH Act, which requires the minimum burden be shouldered by the employer."

The proposed rulemaking requires extensive medical records, exposure records, and a daily roster of all persons entering a regulated area to be kept for 40 years. A written compliance program, updated every six months, mechanical ventilation records, and a list of employees who have taken the training program must also be maintained for lesser periods.

Comments regarding the roster have been made in connection with the "regulated area". The written compliance program and the attendance list for the employee training program are strictly for the convenience of the compliance officer and should not be required, particularly for the construction industry. This committee has reduced the medical record burden by relating medical examinations only to "permissible" exposures and the monitoring record burden by excepting bound products. Further reductions are effected by setting a 5 year retention requirement. We feel these are realistic limitations and suggest that they be retained.

In conclusion, we would like to thank you for this opportunity to comment and express our hope that the new standard will emphasize the protection of the worker by reducing the fiber levels to whatever is considered appropriate, by means which are feasible for the great number of small business that constitute the construction industry. The employer should not be saddled with expensive recordkeeping requirements that contribute little or nothing to such protection. Finally, the limited medical and monitoring resources of the United States should be directed to those areas where the highest possibility of problem exposure takes place, not in chasing remote possibilities of low exposure to effect literal compliance with a standard which does not realistically reflect the transient nature of the construction and similar industries.