

TEXACO

FORM G-44 12-79

To Refinery Plant Mgrs/Operations Mgrs

From F. J. Beall Date 10/14/82

file SAF-INDUSTRIAL HYGIENE
ASBESTOS

The attached is forwarded for your information regarding work practices for handling sheet asbestos (Transite). Additional copies may be obtained from the Asbestos Information Association (address on back cover of attached pamphlet).

DJS/aet

Attachment

JMS-RJE-RHH

PLAINTIFF'S EXHIBIT

TEX-74

TEXACO U. S. A. HOUSTON			
ENVIRONMENTAL AND HEALTH			
OCT 18 '82			
rel on 10/18/82 aet			
FJB		CHL	
ERK		DNA	
IRAD		CEC	
JPY		SECY	
JJG			

WA-TEX 005517

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TEXACO

cc: GEB-JLM from
FJB

Houston, TX
October 13, 1982

JMS *[initials]*
ERK *[initials]*

SAF-INDUSTRIAL HYGIENE

Mr. F. J. Beall:

As you are aware, October 5th and 6th I had the opportunity to attend the local Tri-Tex Conference sponsored by three Affiliate Sections of the American Industrial Hygiene Association. The morning presentations of the first day were noteworthy. Attorneys Jim McKinnon (Gulf Oil Corporation), Mary Alexander (Caputo, Liccardo, Rossi, Sturges and McNeil, San Jose, California), Craig Lewis (Fisher, Gallagher, Perrin and Lewis, Houston, Texas), as well as Herschel Hobson (Southwest Occupational Health Services Inc.) provided presentations on legal aspects of occupational and environmental health (third party liability, strict liability and product liability).

Dr. Hobson discussed civil actions, describing the jury's charge to perform a balancing test based upon the preponderance of evidence. Dr. Hobson indicated that a standard mortality ratio of 1.4 (for Hodgkin's Disease) which was not statistically significant would be tested within the next year to determine if a jury would find it legally significant.

Dr. Hobson related that the first gross negligence case of an employe against his employer was sustained through the Texas Supreme Court (1981). Punitive damages were awarded. It is Dr. Hobson's opinion that this precedent will be followed by many similar actions in the near future. It is Mr. Lewis' opinion that any injury or illness whose proximate cause is related to violation of a regulatory standard (i.e. OSHA) provides sufficient grounds for such actions.

Dr. Hobson discussed discovery and strategy of the plaintiff's attorney in civil suits. It is Dr. Hobson's opinion that the preferred strategy is to name as many defendants as possible, to place those defendants in a defensive and adversary posture, and to promote end-fighting among the defendants. Dr. Hobson suggested that the plaintiff's attorney should also bring civil action against individual employes to further divest the defendant employes' interest from his employer (also a defendant).

Dr. Hobson indicated that strategically the most useful and incriminating discovery technique is deposition of an employer's Industrial Hygiene and Safety staff. Mr. Lewis supported this opinion and indicated that it would be his intention to depose individual employes as having very broad responsibilities

WA-TEX 005518

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with the intention of demonstrating in testimony that these responsibilities have not been met.

Mr. Lewis and Mr. McKinnon discussed strict liability. It was pointed out that a manufacturer has a duty to provide an adequate warning to the ultimate product user (Borrel vs. Fiberboard, Circa 1975). An inadequate warning constitutes strict liability. Evidence provided by the manufacturer to demonstrate that the product hazards were not foreseeable will not be admissible. Punitive damages are typically awarded for such suits.

Incidental to these presentations, it was pointed out that employers should be cognizant that demonstration of compliance with OSHA and consensus standards is not an adequate defense in civil actions. The plaintiff's attorney will demonstrate that both are minimum requirements (often designed to protect some percentage of the population at risk). It was also noted that the Reagan Administration OSHA has referred its first case to the Justice Department for criminal prosecution.



D. J. SLACK

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