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OF COUNSEL

Produced in camera under seal by order of
Judge Paul Riley 224 Gordon Bldg.
October 18, 1989, in JAMES V. BROWN v. JAMES J. FITZGERALD, JR.
et al. 87-11137
F. B. HANKE (400-1756)

November 8, 1972

Mr. J. S. Royer
Young Sales Corporation
1054 Central Industrial Drive
St. Louis, Missouri 63110

Dear Spence:

Enclosed herewith is form of request for deferment of the monitoring and medical examination requirements to December 31, 1973. If this meets with your approval, please sign the certification and return to me immediately and I will file it with the Secretary of Labor. If either you, Dick or Don have suggestions, please telephone them to me and I will incorporate them in the request. I expect to add the letters referred to as Exhibit "B" upon receipt thereof from Dick Stapleton.

I have talked to Dr. Van Atta, who referred me to the solicitor, Mr. Ben Mintz, who had me talk to Mr. Housh, one of the lawyers in the solicitor's office. Mr. Housh stated that he would have the proper person with whom we should confer call me, but I have not received this call as of this time. I believe that we should personally present this request to the proper official in Washington and I should have his name by the time you return the request to me. I will keep you advised.

Very truly yours,

JAMES W. R. BROWN

for the firm

JWRB:ito
Enclosures

cc: Mr. R. A. Stapleton
✓ Mr. Donald Bradshaw

PLAINTIFF'S
EXHIBIT
WV-01155

PLAINTIFF'S
EXHIBIT
44566.0

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Early Action

Steiger and Congressman Carl D. Perkins (D-Ky) chairman of the House Committee on Education and Labor, had promised early action on the Steiger amendment while voicing opposition to the amendment to the appropriations bill for the Departments of Labor and Health, Education, and Welfare exempting firms with 15 or fewer employees from OSHA enforcement (Current Report, September 21, p. 411). House-Senate conferees later reduced that number to three.

Legislative Action

Steiger's amendment to OSHA was passed in the Senate as an amendment introduced by Senator Jacob Javits (R-NY) to a public works bill (HR 16071). On the House side, the bill was reported out by the Committee on Education and Labor but never reached floor action.

Congressman John A. Blatnik (D-Minn), chairman of the House Committee on Public Works, deleted the amendment from the public works bill approved by the Senate because the measure was controversial and subject to a point of order.

Steiger's office attempted to have the bill brought to the House floor under a suspension of the rules. This attempt failed because only emergency and procedural bills were given suspension action.

Steiger's office reports that the bi-partisan commitments to the bill still stand and that favorable action on the amendment is hoped for next year through regular channels. Passage of the amendment was adversely affected by opposition brought by the Chamber of Commerce, the National Association of Manufacturers, and the United Steelworkers of America.

Steiger claimed support for his amendment from the National Federation of Independent Businesses, the National Safety Council, the Nixon Administration, the National Small Business Association, and the AFL-CIO.

Union Opposition

Sheldon Samuels, director of Health, Safety, and Environmental Affairs, Industrial Union Department, AFL-CIO, said both the Steiger bill and the Javits amendment were opposed by the IUD, the Steelworkers, the International Association of Machinists, the Oil, Chemical, and Atomic Workers, and the United Auto Workers.

Though the national organization of the AFL-CIO supported the amendment, individual union organizations were divided on the issue.

Standards

OSHA PUBLISHES "CLEAN" PACKAGE OF STANDARDS AMENDMENTS-REVISIONS

Amendments and revisions in the general industry job safety and health standards in Part 1910 were issued in a "clean" package by the Occupational Safety and Health Administration on October 18.

The revised standards package as issued by OSHA will appear in a future supplement to the OSHR Reference File.

The purpose of the revision is "to publish fully in one place the present occupational safety and health standards contained therein in order to reflect many changes made during the current year and thereby to improve their usefulness and facilitate their enforcement; and to correct a number of typographical and clerical errors in the text of the standards; and to publish indexes with the standards, which are intended to permit quicker access to pertinent standards.

"Since this revision does not make any substantive changes in the standards, it is not necessary to provide notice of proposed rulemaking, opportunity for public participation therein, nor any delay in effective date. For the same reason, good cause is found for not following the regular procedure for rulemaking provided in 5 U.S.C. 553 and for making this revision effective immediately."

This revision includes amendments through September 22, 1972.

General Policy

AMERICAN SMELTING OFFICIAL CRITICIZES OSHA VIEW OF THRESHOLD LIMIT VALUES

PITTSBURGH, Pa. - (By an OSHR staff correspondent) - In some work situations, air monitoring or other kinds of environmental monitoring may give only a crude assay of relative health risk, Kenneth W. Nelson, director, Department of Environmental Sciences, American Smelting and Refining Company, Salt Lake City, told the Industrial Health Foundation on October 11.

In some instances biological monitoring by means of blood, urine, or breath samples may be far more accurate in measuring effective exposures as opposed to apparent exposures and may, in addition, reveal intake of a toxic substance that might otherwise have escaped notice, Nelson said.

Lead is an example of a substance monitored better by analyses of blood and/or urine than by analyses of airborne dust and fume, he said. In the case of lead, compliance with biologic standards might well be accepted as proof of compliance with environmental standards.

Threshold limit values have many pitfalls, Nelson said. In many instances TLV's are concerned with comfort and have little direct relation to safety and health.

In a few instances tlvs are ceiling levels that should not be exceeded, Nelson said. The TLV's are needed by engineers and others to help guide in the establishment of controls.

The Labor Department has taken the position that exceeding a TLV is justification for the issuance of a citation. The levels of airborne contaminants should be assessed along with other pertinent factors. Exceeding a TLV could be used for the basis for a provisional citation, pending review of other factors.

In many industries the only way to comply with TLV limits is to shut down completely, Nelson said. The Occupational Safety and Health Administration should recognize the reality of the situation and modify its standards and procedures accordingly.

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Labor Department

Dr. Floyd Van Atta, special assistant, OSHA Office of Compliance, said the Labor Department does not have excessive dependence on TLV's. The asbestos standard involves biological monitoring among other things, he said.

OSHA will include biological monitoring in standards where it is appropriate, Van Atta said.

Air Standards

Dr. H. E. Stokinger, chief, Toxicology Branch, Division of Laboratories and Criteria Development, National Institute for Occupational Safety and Health, said industrial air standards allow for excursions because they do not represent a fine line between safe and dangerous.

The passage of OSHA reaffirmed at the federal level industrial air limits that had been official standards for about a decade under the Walsh-Healey Act, but which as promulgated by the TLV committee or the American National Standards Institute, had always been unofficial, recommended guidelines, Stokinger said. Being mandatory entails inspection for compliance and that entails a fine appreciation of the intent and scientific basis of the air limits, if fair judgment is to be made in appraising compliance.

The determination of compliance under the terms of time weighted averages, limiting ceiling and peak values and mixed temperatures is extremely difficult, Stokinger said. With a general lack of continuously recording air sampling devices, knowledge of frequency of peak values with safety and work habits, grab samples offer a challengeable basis for compliance determination, particularly recognizing the safety factors in air limits.

Biological monitoring is the main hope for improvement, Stokinger said.

Safety Programs

Dr. E. M. Dixon, medical director, Celanese Corporation, New York, said that fully automated new plant installations could have the same potential for hazards as older places.

Passage of OSHA changed the name of the game from "thou should" to "thou shalt," Dixon said. Although most companies have maintained generally good and healthy workplaces, new official standards require a significant expansion in scope. In the area of health, this includes (1) increased monitoring and surveillance of workplace hazards, (2) increased control measures to meet new lower limits for exposure, (3) more extensive medical coverage, (4) additional recordkeeping, (5) substantially increased toxicity testing and maintenance of toxicity data, (6) the need to sustain relationships with related professional associations, and (7) concomitant increase in health costs.

Industrial Nurses

P. Jean Klara, Research Department Nurse, Koppers Company, Inc., said OSHA requires an extension of the industrial nurse's role. The traditional role is no longer sufficient.

Some new areas of responsibility include knowledge of the work environment and the toxic substances which may be present. The nurse must learn new screening

techniques for possible occupational exposures and become familiar with the criteria and standards set by the National Institute for Occupational Safety and Health.

The nurse's ability to act as liaison between management and employee will be important in establishing a sound basis of mutual understanding of the new rules and regulations brought about by the Act, Klara said. The nurse will have to move from her sometimes isolated environment into the plant and become an active member of the safety and health team.

Legal Implications

William L. White, Jr., attorney, United States Steel Corporation, said lawyers have a place in the standards setting procedure. Lawyers could be very useful in handling variance cases and disputes that arise when consensus standards are enforced as mandatory.

An industry should maintain close coordination of all OSHA activity, White said. Individual plants should not function independently. It would be illogical to have one plant of a firm contest a citation for an alleged violation and another installation pay the penalty for the same offense.

Workmen's Compensation

John E. Weckman, staff supervisor, Workmen's Compensation and Casualty, United States Steel Corporation, said OSHA was meant to prevent industrial accidents and has no direct impact on workmen's compensation.

Both the frequency and severity of industrial accidents and diseases are still going up, Weckman said. The only way to get OSHA across is to show the high cost of accidents and disease.

Textile Industry

F. Sadler Love, secretary treasurer, American Textile Manufacturers Institute, said the problem of byssinosis is not as great as was once feared.

The Industrial Health Foundation studied some 20 plants and over 1,000 employees. But even after two years of study some of the questions are still unanswered, Love said. The severity of the disease and the number of people affected is known, but no one knows the cause of byssinosis or how to control it.

It was found that some 5 percent of employees in larger plants had symptoms of byssinosis, Love said. The industry feels a great urgency to solve the problem. But the industry feels very pressed by the government standard for cotton dust when it is believed that a group of enzymes may cause the disease, he said.

Standards Emphasis

Leo Teplow, Organization Resources Counselors, Inc., Washington, D.C., said the 1972 injury rate would probably be worse than other years because of the undue emphasis on standards to the exclusion of other safety and health factors.

OSHA does put some stress on "good faith" but it only affects the amount of the proposed penalty and does not eliminate the citation, Teplow said. Yet "good faith" is at the heart of job safety and health.

OSHA serves a useful purpose in elevating the importance of safety and health in the company and bringing it to the attention of top executives, Teplow

Produced in CANADA under seal by order of
Judges Paul Riley and Gordon Macg.
October 18, 1989. in CANADA v. A. P. CHASE,
et al. 87-11270

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BY COUNSEL

FRANCIS A. BROGAN (1960-1961)
W. B. BAKER (1964-1965)

November , 1972

Mr. James D. Hodgson
Secretary of Labor
Washington, D. C.

Attention: G. C. Gunther,
Assistant Secretary of Labor

In re: Deferral of monitoring and
medical examination require-
ments of Standard for Exposure
to Asbestos Dust

Dear Sir:

National Insulation Contractors Association, on behalf of the insulating contractors generally, respectfully requests a temporary variance from the monitoring and medical examination requirements of Title 29 Code of Federal Regulations, section 1910.93a. The variance requested is to defer the monitoring and medical examination requirements for insulation contractors until December 31, 1973. In support of this request, we submit the following:

1. Standard from which variance is sought. Variance is sought from the monitoring requirement contained in Title 29 Code of Federal Regulations, section 1910.93a(f), requiring monitoring within six months of the publication of that section and from the medical examination requirement contained in section 1910.93a(j).

2. Variance sought. The variance sought is to defer the time for compliance with the monitoring and medical examination requirements to December 31, 1973.

3. Basis for request. When the Standard for Exposure to Asbestos Dust was issued, National Insulation Contractors Association recognized that the great bulk of insulation contractors could not, without assistance, comply with its requirements, especially the monitoring and medical examination programs. Most of these contractors are small business organizations without technical

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personnel to guide them or the knowledge of how to avail themselves of the needed technical assistance. Therefore, National Insulation Contractors Association appointed a special OSHA Task Force to facilitate compliance on a national basis.

The special OSHA Task Force carefully reviewed the problems involved and concluded that the only practical way of enabling insulation contractors to comply with the monitoring and medical examination requirements was for National Insulation Contractors Association (1) to identify or train persons who would be competent and available in all parts of the country to do the monitoring for the contractors, (2) to identify or train persons who would be qualified and available to make the examination of the filter samples and identify and count the asbestos fibers, (3) to identify and arrange for the availability in all parts of the country of medical personnel who are qualified to make the necessary medical examinations and properly take and interpret the necessary roentgenograms, and (4) to employ a technical director or directors who would establish, coordinate and supervise these programs, check the validity of the results, review the opinions of the different medical examiners and provide for the retention and availability of the records.

Earnest and strenuous attempts have been made to establish such a national program. The special Task Force has concluded, however, that certain conditions make it impossible to establish such a program within the required time limits and that by the time any such program could be established, the need therefor will no longer exist.

A major change is taking place in the industry. All manufacturers of insulating materials are changing over to asbestos free materials. Attached hereto as Exhibit "A" are advertisements appearing in the November 1972 issue of the NICA Outlook, showing the availability of nonasbestos materials. Attached hereto as Exhibit "B" are copies of letters from the major insulation manufacturers reflecting their programs to change over completely to nonasbestos containing materials. The information we have received indicates that by the end of 1973 the contractors will be using asbestos free materials.

Our investigation also reveals that the supply of trained personnel who will be available to the contracting industry to do

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the monitoring and analysis of the samples will be inadequate and that training programs will be necessary to make available trained personnel in all parts of the country. Because the need for these services will be eliminated before the training program can be completed, it is impossible to get trainees and, of course, with the elimination of asbestos from insulation materials, such a program would be pointless.

Our investigation of existing monitoring and sample reading techniques indicates that opinions of trained personnel may vary as much as 300 per cent. This problem is reflected in the Bureau of National Affairs Report of the Industrial Health Foundation meeting at Pittsburgh, Pennsylvania, on October 11, 1972, copy of which is attached as Exhibit "C."

With respect to the medical examinations, the officers of the International Union of Heat and Frost Insulators and Asbestos Workers have advised that their members will not submit to the examination. Likewise, with the total elimination of asbestos from insulating materials within a year, such a program is impossible to arrange and, even if it could be arranged, would serve a purpose only for a very limited period of time.

In view of the foregoing, we believe that the monitoring and medical examination requirements should be deferred to December 31, 1973.

We want to point out that the monitoring and medical examination requirements are testing procedures rather than procedures to control the amount of airborne asbestos fibers. All of the control requirements of the standard would remain in effect.

Consequently, this request for variance does not involve the elimination of any procedure required to control the amount of airborne asbestos fibers.

With the elimination of asbestos from insulation materials, the asbestos problem will then be limited to instances of demolition and removal. The asbestos standard imposes very strict requirements with respect to such work, including use of respirators designed to protect the employee even though the airborne asbestos fibers exceed 100 times the ceiling limits. 29 Federal Code of Regulations, section 1910.93a(b)(2)(iii) and (d)(2)(iii). These occasions will

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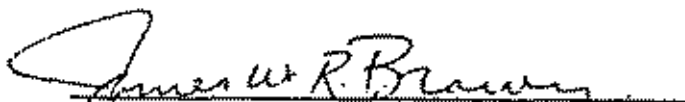
be limited in number and some practical plan will have to be devised to meet monitoring and medical examination requirements in such situations.

4. Steps to protect employees. As pointed out above, this request for variance does not eliminate any action for the control of airborne asbestos fibers. It simply defers two testing techniques. Consequently, all of the requirements for controlling such fibers will remain in effect.

5. When compliance can be had. It is expected that by the end of 1973 all insulating materials will be free of asbestos. Consequently, the monitoring and medical examination requirements will be eliminated except in demolition and removal work. With the need for trained technicians thus greatly reduced, it is expected that compliance in these limited operations will be possible by the end of 1973.

6. Notice to employees. On November , 1972, a copy of this request was mailed to Andrew T. Haas, General President of the International Association of Heat and Frost Insulators and Asbestos Workers, Room 505 Machinists Building, 1300 Connecticut Avenue, N.W., Washington, D. C. 20036. Such copy was sent by United States mail, postage prepaid, and by certified mail. In our transmittal letter, copy of which is attached, notice was given that employees may petition the Secretary of Labor for a hearing on this request.

Respectfully submitted,



James W. R. Brown, Counsel
National Insulation Contractors Association

CERTIFICATION

R. S. Royer certifies that he is Chairman of the Special OSHA Task Force of National Insulation Contractors Association, that the information set out above was obtained by the special OSHA Task Force in connection with its attempts to set up a national

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system for compliance by insulation contractors with the monitoring and medical examination requirements of the Standard for Exposure to Asbestos Dust and that the statements contained in this request are true to the best of his knowledge and belief.

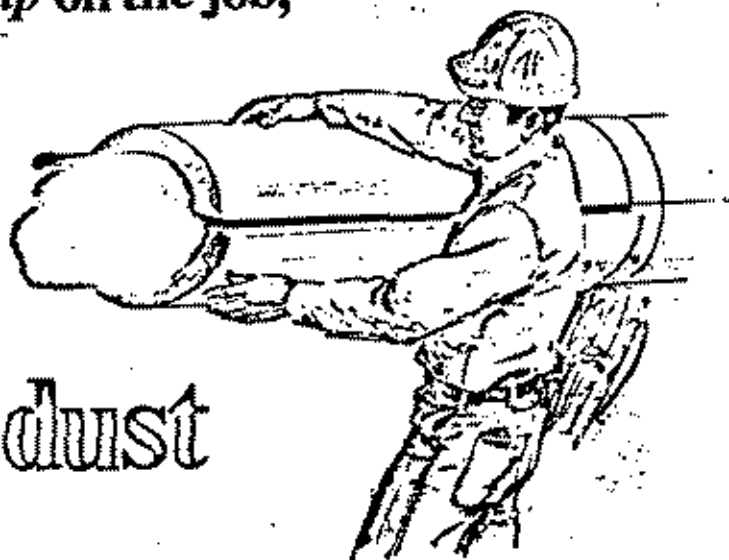
J. S. Royer, Chairman
OSHA Task Force

With *Super Caltemp*® on the job,

Forget about OSHA asbestos dust limits.

Super Caltemp...

The first
asbestos-free calcium
silicate insulation
on the market.



If you are thinking about using asbestos-bearing insulation material for process control or conservation of energy, you should know about the OSHA asbestos dust control regulations and protective measures required. They're tough!

You should also know about Super Caltemp by Pabco. The first asbestos-free high temperature calcium silicate insulation on the market.

OSHA Regulations

In accordance with stringent new regulations of the Occupational Safety and Health Administration, you are responsible for monitoring asbestos dust levels and maintaining rigid control of allowable concentration. Where engineering methods of control are not feasible, you must provide protective respirators and train employees to use them. You are also required to provide periodic medical exams for any employee exposed to asbestos dust in excess of specified limits. Records of personal and environmental monitoring must be kept for at least 20 years.

Pretty grim prospect, isn't it?

**There is an
alternative. And
it costs no more.**

Other calcium silicate insulation manufacturers use asbestos fiber for reinforcement. Pabco, makers of Super Caltemp, offers a specially reinforced superior product that is absolutely asbestos free. And that's

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1. Stainless Steel Corrosion Protection.

Austenitic stainless steel equipment is widely used in petro-chemical, petroleum refining, power generation and related fields. Super Caltemp is an inhibited product which does not contribute to stress corrosion cracking of austenitic stainless steel.

2. 1200°F Use Temperature.

3. Patented "Precision Molded" Process assures uniform fit.

Other process calcium silicates are "cast" in half-round sections; the legs are then trimmed in an attempt to achieve a true half-circumference pipe covering. Pabco's patented process yields full round "pipes," which are then split in half. Two half sections will match perfectly even if each section was made years apart, assuring a uniform fit every time, with minimum time lost in trimming and wiring.

Super Caltemp is available in pipe covering, blocks, pre-formed elbows and cements.

Pabco Super Caltemp: A full line of asbestos-free industrial insulation, available now. For the name of your local independent Pabco Contractor/Distributor, write:



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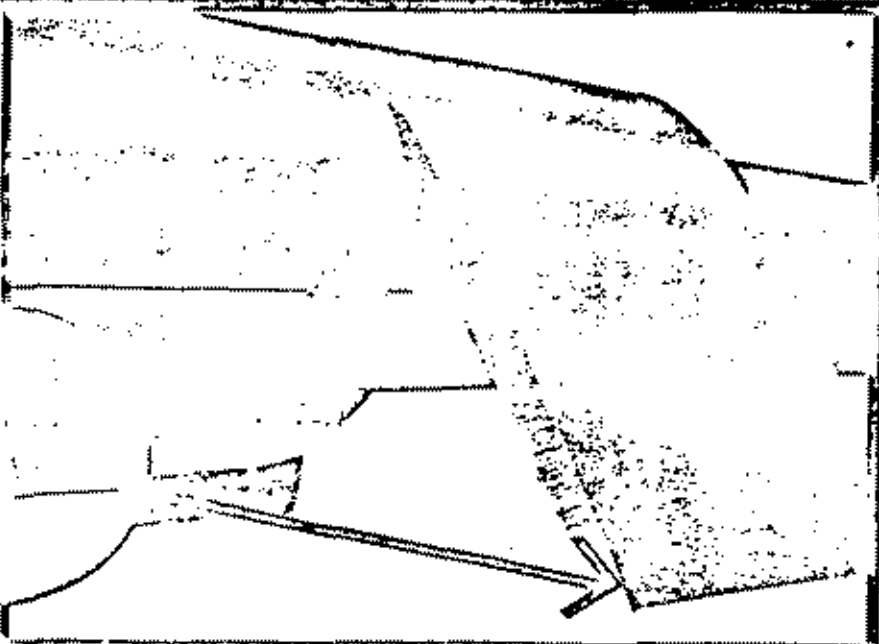
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Keene mineral wool insulations install easier. Save labor. And they're completely asbestos-free.

These spun mineral wool insulations, all rated to at least 1200°F, cost less to install than calcium silicate products because they're lightweight and flexible, cut easier and fit better. There's no wasteful breakage. No delivery worries. And no asbestos problems.

One-step Preslok

Keene's Preslok metal-jacketed pipe insulation resists shock better than molded products. And it's convenient to install in one quick step. Helps suppress pipe noise. And Preslok ships flat, reducing storage space by two-thirds. Because Preslok accommodates pipe expansion, double layering is unnecessary. Available in true diameters of 6" to 24".



Curved Mono-Block Meeting the demand for extra insulation for larger pipes and boilers, high-performance (1900°F) Mono-Block is available in a new curved shape, in diameters from 24" to 60". There are fewer pieces to install. No hot spots because joints fit tightly.

KC 1200 Block This rigid insulation is your best bet for applications such as process equipment and breechings. Easier to cut than calcium silicate, it's easily impaled over pins or studs. KC 1200 requires less labor, eliminates breakage, assures tight joints, and is not dusty.

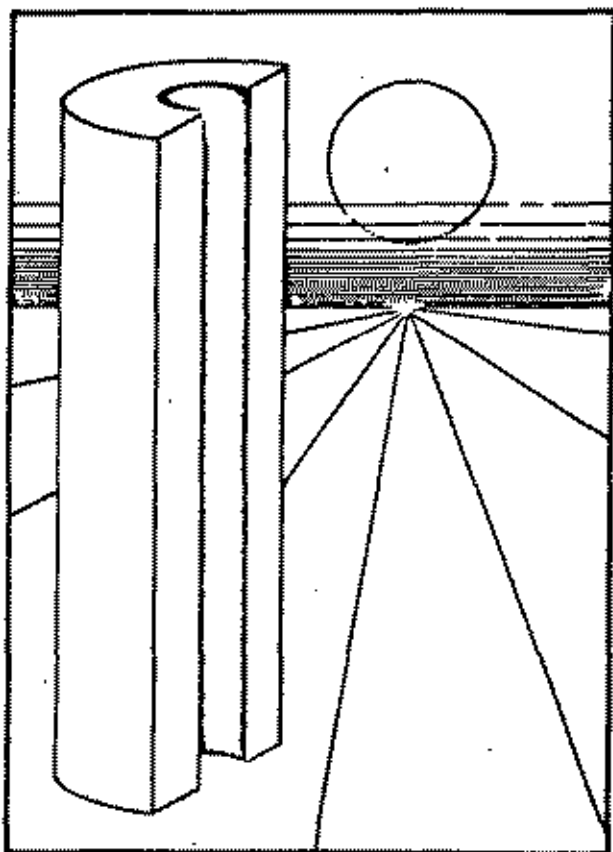
For prices and details on any or all Keene industrial insulations, including selected calcium silicate products, write or call Keene Corporation, Ceiling & Insulation Division, U.S. Route #1, Princeton, N.J. 08540. Phone (609) 452-8800. Telex 843-475. TWX 510-685-2368

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4,5,6,7,8,9, & 10. All the options you need . . . shatterproof, stable, non-corrosive, acoustical, incombustible,

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Everyone in the industrial insulation business knows the many reasons for the use of asbestos-free materials. And everyone in any business knows that having the handle on a widely demanded, labor-saving product increases profitability.

PAMROD puts you in that position with asbestos-free, molded high temperature "Elbs" and "Tees", because we're the only company that manufactures a complete line of such products. We have it all.

What else we have is the finest product available to the industry. Superior performance is engineered and built into every PAMROD insulation product. And, yet, PAMROD elbow and tee covers cost no more than competitive products.

Over the years, PAMROD has played an important role in establishing manufacturing standards for the insulation industry. Our innovative approach to problem-solving continues to result in improved insulation materials and more efficient application techniques.

Since 1960, when users and suppliers of high temperature insulation were introduced to PAMROD's exclusive molded silica elbow and tee covers, the entire insulation industry has been realizing substantial material and application savings through their use. So can you... today. PAMROD's asbestos-free "Elbs" and "Tees" are available in sizes to fit virtually any insulation need, and if you have a unique problem, we will help you solve it, too. For during more than two decades we have excelled in developing specialty insulation for our industry.

Give us a call. Let us prove to you that insulation products and services will make you money.

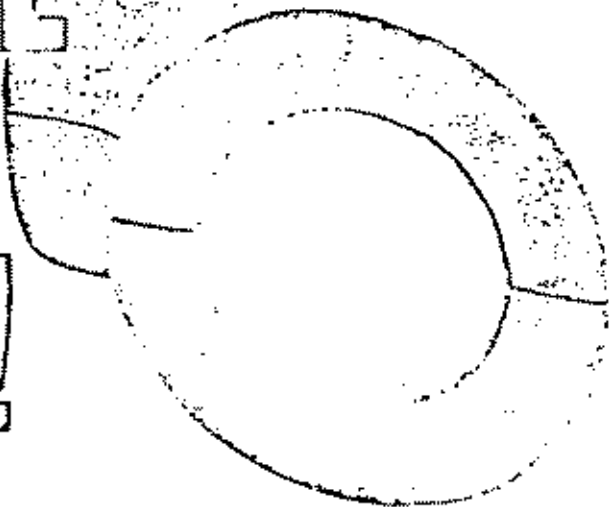
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