

February 29, 1984

ASBESTOS/STATUS REPORT

From the outset, we assumed the Environmental Protection Agency was determined to ban asbestos. It was apparent that EPA had isolated its decision-making within the Agency and was prepared to resist outside pressures. Our efforts at Gray and Company have been to coordinate with the Embassy and with the industry to apply effective pressure outside of EPA and from all potential allies. This campaign has been undertaken within the Administration, and on Capitol Hill. Progress has been slow, however, support has been found and reinforced within the Administration.

From Canada's view, however, both the risk of negative public opinion and the political risks that accompany opposing EPA's position are very apparent. On Capitol Hill in particular, there are very serious risks in publicizing a lobbying effort against EPA -- even the most likely sympathetic Members of Congress draw back cautiously when approaching the asbestos issue. They recognize the public fear of asbestos exposures, particularly in the schools and possibly in drinking water, and are skeptical of claims to the contrary. On the other hand, the reception within the Administration to industry's views has been far more positive and there is clearly more of a willingness to review all the evidence and to reach different conclusions. The following is a summary of the responses and developments within the Administration and on Capitol Hill:

- o U.S. Department of State. The State Department is trying to be sympathetic to Canada's case. What complicates matters, of course, is first, acid rain, and second, a perception that Canada is motivated first of all by provincial political self-interest. At each step of our discussions, we have tried to dissociate asbestos from acid rain and make it clear that the Canadian Government would like to come to some accommodation with the U.S. that isolates these two topics -- this, unfortunately, has been difficult if not impossible. In addition, it is especially critical with the State Department to identify other countries, particularly the EEC, that share Canada's concerns on a possible asbestos ban. We can continue to count on the State Department to help present Canada's views to EPA and to add a foreign policy dimension to the discussion. However, this support will be slight, particularly because the State Department lacks technical or substantive expertise in the issues. Like the U.S. Trade Representative, once regulations are distributed for comment, or raised for discussion within the Cabinet Council on Natural Resources, the State Department may be viewed as willing to support an alternative international regulatory approach.

- o Recommendation: The State Department must continue to feel pressure from Ambassador Gottlieb as well as from Ottawa, to continue making asbestos a high priority. Efforts must continue to directly enlist other governments on the side of Canada to make formal representations to the State Department and to the U.S. Trade Representative. These third-party contacts, particularly from EEC countries, will have an impact on U.S. foreign policymakers that will eventually have an impact on the rulemaking process.

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o U.S. Department of Interior. Contacts with the Department, at the Office of the Secretary, at the Assistant Secretary level, and within the Bureau of Mines and the U.S. Geological Survey have been useful. Ambassador Gotlieb and Embassy representatives have reinforced Gray and Company contacts and confirm a growing willingness on the part of the Department to effect the rulemaking outcome at EPA. Dr. Malcolm Ross, at the U.S. Geological Survey, in particular, along with other Department of Interior representatives, is expected to participate in the next round of technical discussions with EPA staff in March. Although the Department has not made a commitment to raising the issue before the Cabinet Council, it is clear on substance, the Department may be expected to give effective support to Canada's position in comments on the EPA rulemaking. Ross and others clearly believe the concept of a ban is ill-advised, unnecessary, and have adverse political implications and high cost to the federal government. For example, Ross revealed that the Interior Department's Bureau of Reclamation has already invested \$400,000 to help find a solution to the California aqueduct which is contaminated with high volumes of asbestos fibers. Once asbestos is banned, he and others believe, it will be tough to quell public fears on asbestos exposures without ripping up asbestos cement pipe and asbestos insulation wherever found. The cost of such a massive undertaking to the federal and state governments would obviously be in the billions of dollars -- without any evidence that such exposures are unreasonable risks to public health or safety.

o Recommendation: The Department of Interior is clearly a key player. We will continue to apply pressure on the Secretary to use his Department's influence and expertise in this area to effect the EPA rulemaking; whether in comments to OMB or by putting it on the agenda for the Cabinet Council on natural resources. In addition, Interior must continue to find additional allies within the Administration so it does not have to attack this problem unassisted.

o U.S. Department of Commerce. The Secretary of Commerce, Mac Baldrige, is sympathetic to Canada's concerns and has requested the Department to take part in the rulemaking process. However, he has not done so vigorously to date. His experts, however, like those at Interiors, appear to support the industry position and believe that a ban on asbestos is unnecessary and unwarranted. This message has been reinforced by Ambassador Gotlieb and has been helpful in getting this issue the priority it deserves in the Secretary's office.

o Recommendation: When push comes to shove, the Department of Commerce appears to be a reliable vote of support on behalf of Canada's view. However, pressure must continue to be exerted to insure that Commerce will not stick its head in the sand and avoid taking on what may be an interagency squabble. Industry will be best served by making its views known to the Department by writing or contacting the Secretary of Commerce.

o U.S. Trade Representative. Both Ambassador Brock and Deputy Special Trade Representative Rob Lighthizer are now well briefed on the asbestos matter, the trade implications, the views of the Canadians, and the possible involvement by the EEC. At the moment, the USTR does not consider this a highly significant trade issue, but was impressed by the fact that the Canadian government has raised the issue at the ministerial level and on more than one occasion. There is little credibility given to arguments that an asbestos ban may be a violation under Article 2 of the GATT under technical barriers to trade. However, there is some sympathy for promoting international harmonization of regulations. The EEC countries collectively and individually, will have more impact on Ambassador Brock and their representations must be brought to his attention. Our hunch is the USTR will side with industry and with Canada's view to improve the regulations before they are made final.

o Recommendation: Continued contact with the USTR through Gray and Company and through the Canadian Government and the EEC representatives must be maintained and reinforced.

o U.S. Congress. The greatest potential for vulnerability in our effort lies with Congress. Certainly nothing could be more risky than to incite the environmentalists and their allies on Capitol Hill to do battle with us. The adverse publicity of the Johns-Manville bankruptcy, the tragedy of the asbestos shipyard workers, and the public fears on asbestos exposure in the schools, have made it next to impossible to get a fair hearing in either the press or in Congress. All of our approaches to Capitol Hill have been low key, and educational. Two leaders of the House of Representatives were targeted as possible allies in softening the EPA position. They are Congressman Jack Brooks (D-TX), the Chairman of the House Government Operations Committee, and one of his subcommittee Chairmen, Congressman Mike Synar (D-OK). Both are members of the majority party in the House, both represent the mineral rich region of the West, and together they have jurisdiction over the workings of the federal government, in particularly the EPA. In our discussions, however, with their key staff members, we found mixed receptivity — although there was not inherent loyalty to EPA, there was ingrained measure of bias and skepticism against asbestos. Jack Brooks' district in Texas, although it includes a couple of asbestos facilities, also has a high number of asbestos litigants. Even if they desired to be very helpful, both Brooks and Synar tend to view the risks as high and are not overly concerned that the EPA rulemaking process may not be entirely fair (Committee staff tend to believe other Departments including Interior and Commerce, have long ago been co-opted by industry and cannot be counted on for an unbiased judgment either.)

o Recommendation: It is unlikely we will find constructive or key support from Members of Congress that we would like, but it is important to continue to perform low key soundings on the Hill to insure that there are no pressures by environmental constituencies to box EPA in and to hold their feet to the fire in implementing an asbestos ban. At the moment, there is no evidence that Congress will become involved. However, the increasing militancy by the teachers' unions and other public sector unions to remove asbestos from schools and other public buildings may find a welcome mat on Capitol Hill and particularly from certain Committees. It is important for Canadian labor leaders who are concerned with the direction of EPA rulemaking to make their views known very strongly to their American counterparts and to begin to neutralize whatever momentum labor hopes to gain.

o The Media. Whatever views the American public and their elected Representatives have about asbestos, those views have been shaped some time ago by the highly negative reporting that has accompanied the tragic cases of the World War II shipyard workers, the industry bankruptcies, and the scare about school exposures and the risk to small children. In the public's eye, asbestos is synonymous with poison and the matter is settled. At best, we can hope to chip away at this perception, but not by taking a view that is 180 degrees opposite. In other words, our message has been and should remain: One, asbestos is a hazardous substances, but under modern and highly regulated applications it can be safely and efficiently used. Two, the availability of safe, economical substitutes — which underlies EPA's basic premise to ban asbestos — is an unsolved question. According to even the most recent findings of the National Academy of Science, many substitute fibers, both natural and man-made, are new to our experience and their safety is at best uncertain. Asbestos which has been fully tested can be used safely; over the years we may find the substitutes are as potentially dangerous or even more dangerous than asbestos. Three, banning asbestos can only fan public hysteria about its health risks. Banning asbestos cement pipe, for instance, will eventually lead to demands to replace all existing AC pipe whatever the cost or inconvenience to the locality. For instance in Los Angeles alone, the replacement of the existing aqueduct is estimated to be \$200 million dollars, and this is certainly only the tip of the iceberg.

o Recommendation: Regular contact must be maintained with the media to insure these messages are reinforced, particularly in business and trade publications for industry consumption. It is virtually a lost cause to mount a public education campaign at this date to convince the public their fears on asbestos risks are unfounded. But, there must be responsible and thoughtful response to government pronouncements as they occur and to publicize the information that adds credibility to our own arguments. Strong support, which should be released to the U.S media as soon as available, should come from the Report of the Royal Commission in Ontario and we must be prepared to use that information intelligently once it is available.

This is Underway { In addition to the actions above, we recommend two tactics now be taken with the Office of Management and Budget and specifically with Chris Demuth. The first should be an initiative by Kirkland and Ellis to discuss with Demuth the legal and technical problems with the EPA rulemaking process followed by a second discussion with Gray and Company of the political and foreign policy objections to implementing an EPA ban. The technical discussion should outline a possible alternative rulemaking proposal for OMB to suggest that might win the support of other commenting agencies and serve as a fallback proposal for EPA that will solve some if not all of their problem in dealing with asbestos. In the following instance, Gray and Company will prepare for Demuth the range of political concerns, cost implications, and foreign policy considerations that OMB must take into account before giving their approval to any rulemaking.