



A/C Pipe
Producers Association
Public Affairs Committee
International Affairs Committee

Internal Correspondence

TO

J. F. Welch

FROM

J. F. Welch, Director, Public Affairs

DATE January 22, 1982

SUBJECT: Regulatory Affairs, Field Problems and Asbestos Research Report

ACTION REQUIRED: Review for information

Enclosed is the Regulatory Affairs, Field Problems and Asbestos Research Report for the period November 1, 1981 through December 31, 1981. As with previous mailings, sheets are provided only for those agencies or field problems for which new information is available.

If you have any questions, please do not hesitate to call.

JFW/ajb

Enclosure

cc: A. Kahn, Esq.
N. Rahn, Esq.
Nancy Battle (L&G)
Special Counsel (7)

copies to: Public Affairs Committee

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Regulatory, Field Problems

HEGA/3
RAF
Chrono

Consumer Product Safety Commission

November - December, 1981

The Commission is said to be considering the formation of a "chronic hazard advisory panel". The panel would review evidence and make preliminary determinations on whether products are hazardous within the meaning of the Consumer Product Safety Act and Hazardous Substances Control Act. Consumer products containing asbestos are reported to be among the first which the panel would review. See AIA/NA "News and Notes" (December, 1981) for details.

EPA-ANPRM on Asbestos

- The current ANPRM, issued October, 1979, is outdated and does not reflect current regulatory thinking or new developments related to asbestos.
- A new ANPRM would help coordinate EPA's regulatory efforts under other statutes.
- A joint EPA-OSHA ANPRM is necessary for the government to regulate asbestos effectively.

It is unlikely that the revised ANPRM would be published in 1981.

AACPP Staff submitted comments on the GCA Corporation Report, "Asbestos Substitute Performance Analysis - Section 4, Asbestos Cement Pipe." Staff is working with Kirkland & Ellis in the preparation of position papers on control technologies and worker exposures during A/C pipe manufacturing and installation.

EPA, Staff, AIA/NA and Kirkland & Ellis are in the final stages of resolving warning label designs and language for asbestos containing products, including A/C pipe.

November - December, 1981

No action has been taken on the previously mentioned revised ANPRM. Staff is editing position papers prepared by Kirkland & Ellis on control technologies and worker exposures during A/C pipe manufacturing and installation. The revised position papers will be distributed to Member Companies in February, 1982.

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**EPA-Interim Primary Drinking Water
Standards**

November - December, 1981

Authorization of the Safe Drinking Water Act expires on September 30, 1982. The Office of Drinking Water is preparing issue papers on implementation of the Act, proposed legislation which would affect it, and amendments deemed desirable by EPA Staff. See MMJ correspondence, Environmental Protection Agency - National Drinking Water Advisory Council, December 9, 1981 for details. Issue papers will be forwarded to member companies for review and comment.

EPA-Hazardous Waste Regulations

October 31, 1980

The regulations have been challenged by the Environmental Defense Fund and forty major industry groups. Challenges have been filed in the U.S. Court of Appeals for the District of Columbia.

The National Solid Waste Management Association also petitioned EPA to amend the regulations so as to require generators and transporters of small quantities of hazardous waste to comply with the manifest, packaging, labeling and recordkeeping requirements of Parts 262 and 263.

November-December, 1980

The Office of Solid Waste temporarily deleted asbestos as a hazardous waste subject to the regulations of RCRA. The delisting was published in the Federal Register on November 25, 1980 (see JFW correspondence, EPA-Hazardous Waste Management Regulations, December 4, 1980).

January - March, 1981

RCRA Sections 3001, 3002, 3003, 3004, (40 CFR Parts 122-124, 260-267) are being reviewed by the Vice President's Task Force on Regulatory Relief to determine whether they should be revised.

April - May, 1981

No change in status.

August - October, 1981

The EPA Office of Air Quality Planning and Standards plans to delete the current National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements for asbestos waste disposal "in deference to regulation of asbestos ... under the authority of the Resource Conservation and Recovery Act (RCRA) of 1976." Industry opposes this action because of the extensive record keeping requirements of RCRA.

EPA soon will propose a "uniform manifest system" and an "annual survey" to reduce paperwork burden. The "mixture rule" is being reviewed in the context of definition of hazardous wastes. Regulations for issuing permits to hazardous waste land disposal facilities may be proposed by late 1982 or early 1983.

November - December, 1981

On November 13, 1981, the Federal District Court for the District of Columbia ordered EPA to promulgate regulations by February 1, 1982. On December 21, EPA officials presented an outline of the land disposal regulations for hazardous waste. Regulations would apply only to existing land disposal facilities.

OSHA-Cancer Policy

April - May, 1981

No change in status.

June - July, 1981

Assistant Secretary of Labor (OSHA), Thorne Auchter, stated recently that the cancer policy is "on the back burner now and probably will be raised up to the front burner by the end of the year."

OSHA itself joined with industry groups challenging the rule to obtain a delay in judicial review proceedings.

August - October, 1981

The policy is scheduled for review and completion by 1983. OSHA also is reassessing the need/desirability of issuing "priority lists" of substances which might be regulated under the policy. The Administration expects to address this and other issues (including whether negative findings of carcinogenicity should be considered in classifying and regulating substances) when the policy record is reopened via an advanced notice of proposed rulemaking in late 1982.

It is rumored that former Director of Health Standards, Bailus Walker, has engaged in a consultant agreement to recommend options for a revised carcinogen policy.

November - December, 1981

An Advance Notice of Proposed Rulemaking on the cancer policy is expected to be issued in January, 1982. (Note: Since preparation of this report, the Advance Notice was published in the January 5, 1982 Federal Register. See JFW correspondence, OSHA - Carcinogen Policy, January 7, 1982 for details.)

Province of Ontario-Royal Commission

April - May, 1981

No change in status.

June - July, 1981

On June 11, 1981, the Royal Commission began hearing testimony by expert witnesses on the health effects and measurement of asbestos. These are formal public hearings during which Commission counsel and parties granted legal standing, including Kirkland & Ellis, will conduct examination and cross examination of witnesses. The hearings are expected to continue into August.

August - October, 1981

The Commission continued public hearings throughout the summer. Two additional hearings are scheduled for October 23 and November 13, 1981. Kirkland & Ellis is preparing a summary brief of the hearings.

November - December, 1981

Kirkland & Ellis prepared a brief on the public hearings. It reflects the current state of scientific and regulatory thinking with respect to the health hazards of asbestos. Only a small portion of the brief pertains to the potential hazards of asbestos in drinking water.

AGENCY: California Department of Occupational Safety & Health

ACTION: Adoption of List of Hazardous Substances

TITLE: The Hazardous Substances Information and Training Act (SB 1874)

FEDERAL REGISTER REFERENCE: Not Applicable

COMMENT DEADLINE: Not Applicable

DESCRIPTION:

The Hazardous Substances Information and Training Act requires manufacturers and suppliers of hazardous substances to provide material safety data sheets to their purchasers. The Act first requires the Director of the Department of Industrial Relations to prepare a list of hazardous substances. Manufacturers and other sellers of any of the substances appearing on the list must provide their direct purchasers with a material safety data sheet. Employers that receive or obtain such material safety data sheets are required to provide their employees with access to the sheets and give their employees training and information based on data on the sheets.

STATUS:

November - December, 1981

On November 20, 1981, the Department of Industrial Relations, as required, submitted to the Occupational Safety and Health Standards Board its proposed list of hazardous substances. Asbestos and silica are on the list. Further, discussions with DOSH officials indicate that where asbestos is "present under normal conditions of product use", a material safety data sheet will be required. A data sheet thus will be required for all contractors and municipalities installing A/C pipe. According to the official, if such sheets are not available when the employer is inspected, the manufacturer of the product will be cited. AACPP action plan under development.

Connecticut - Policy to Control A/C Pipe

August - October, 1981

It is not clear whether the Commissioner of Health Services will accept industry's withdrawal of the petition for declaratory ruling. Special counsel's contacts with the Commissioner's office indicate that "several options" are being reviewed. The Connecticut Fund for the Environment is said not to oppose withdrawal of the petition.

November - December, 1981

On November 20, 1981, the Commissioner of Health Services denied industry's application to withdraw its petition for declaratory ruling.

On December 3, 1981, counsel filed a show cause order requiring the Commissioner to appear at a January 4, 1982 meeting and show cause why the Department should not be enjoined from issuing a declaratory ruling. The hearing was deferred until January 11, 1982. See JFW correspondence, State of Connecticut - Petition for Declaratory Ruling on A/C Pipe, December 11, 1982 for details.

AGENCY: The General Assembly of Pennsylvania

ACTION: Legislation to Ban Asbestos Cement Water Pipe

TITLE: Senate Bill 1197

FEDERAL REGISTER REFERENCE: Not Applicable

COMMENT DEADLINE: Not Applicable

DESCRIPTION:

As a result of the Blairsville field problem, two local state legislators did, on November 10, 1981, introduce a bill "prohibiting the installation of asbestos cement pipe in water supply systems and providing penalties." The bill states:

"No person, political subdivision or municipal authority shall install asbestos cement pipe in any water supply system unless the Secretary of Health determines that the use of such pipe in water supply systems does not create a public health hazard."

STATUS:

November - December, 1981

The bill was referred to the Joint Committee on Environmental Resources and Energy. The legislative counseling firm of Tive, Hetrick & Pierce was retained to represent AACPP before the General Assembly and state administrative agencies. Ralph Tive will first contact the bill's sponsors, Senators Stapleton and Singel, to determine how strongly they will support the legislation. An appropriate action plan will be recommended at that time. See JFW correspondence, State of Pennsylvania - Legislation to Ban Asbestos Cement Water Pipe, December 15, 1981 for further details.

STATE: Pennsylvania

CITY: Blairsville

DESCRIPTION:

A citizens' group, The Blairsville Committee for Safe Drinking Water, met with the Blairsville Water Authority on September 9, 1981 to protest the use of A/C pipe in a 16 inch transmission main. The group contacted EPA (Gordon Robeck - Municipal Environmental Research Laboratory) and the University of Pittsburgh School of Public Health for information on the health hazards of ingested asbestos.

The Johns-Manville territory manager presented the "A/C Pipe and Drinking Water" audio-visual program but the presentation was received with considerable skepticism. The Water Board asked its consulting engineer to investigate the issue of asbestos in water supply and report its findings to the Board.

STATUS:

August - October, 1981

J-M reports that the problem continues to receive local press coverage. A petition signed by 1600 residents was submitted to the Board in protest to the hook up of the A/C pipeline. Gordon Robeck (EPA-MERL) declined to comment on the matter and recommended that EPA Region 3 (Philadelphia) be contacted for information.

November - December, 1981

The situation continued to deteriorate and the citizen's group persuaded its local state legislators to introduce a bill to ban A/C pipe in Pennsylvania. See State of Pennsylvania - General Assembly.

On or about December 7, 1981, the Water Authority voted to put into use the A/C main in question. In response, the Committee for Safe Drinking Water filed a complaint against the Authority alleging "the use of asbestos cement pipe to transport drinking water to the Borough of Blairsville constitutes an extreme and serious health hazard" On December 17, 1981, plaintiff's counsel and the Authority's council stipulated that the plaintiff's complaint and their request for temporary injunctive relief would be continued to such time as the party's are prepared to go forward with evidence on a permanent injunction hearing. In other words, the court will next hear evidence on the alleged health hazards of A/C pipe. The Water Authority and industry must prepare a defense similar to that mounted in *Walters et al v. Village of Crivitz*. AACPP counsel will recommend an action plan for Association intervention.

August - October, 1981

Johns-Manville has requested AACPP to participate in pending litigation between it and the City. AACPP counsel will prepare a memorandum outlining defense options.

November - December, 1981

On December 17, 1981, the Town Board took a "straw vote" approving removal and replacement of the Town's existing A/C water system. The estimated cost is \$6.4 million. AACPP retained the law firm of Terwilliger, Wakeen, Piehler, Conway and Klingberg, S.C. to monitor future developments and provide counsel on potential industry action plans.

On December 28, 1981, counsel advised that a lawsuit seeking recovery for expenses and damages related to the removal and replacement was "all but certain." See JFW correspondence, Field Problem - Weston, Wisconsin, January 14, 1982 for further details.

STATE: Texas

CITY: San Antonio

DESCRIPTION:

Certain-teed has reported that the Water Department is concerned about the contribution of asbestos fibers to drinking water even when positive purge tapping equipment is used. At the request of the Water Board, Certain-teed representatives have shown the "A/C Pipe and Drinking Water" presentation.

STATUS:

June 31, 1980

The Water Board has requested information on tapping modifications, flushing procedures and asbestos fiber contribution and dissipation rates from A/C pipe tapping operations. At Certain-teed's request, AACPP will provide this information directly to the utility. A technical program is being prepared to develop a recommended work practice to minimize asbestos "contamination" resulting from installation.

July 31, 1980

No change in status.

August 31, 1980

No change in status.

September 30, 1980

A disgruntled employee of Water Board advised media that the City's drinking water contained asbestos from A/C pipe. This resulted in short but extensive coverage by print and broadcast media. On September 8, Staff spoke with Hugh Anderson (Director of Engineering, Water Board). Anderson advised that the Mayor had requested a report from the City Health Department by the end of the month.

On September 18, Staff spoke with Bob Van Dyke (Superintendent, Water Board). Report gave A/C "clean bill of health." Board still concerned about tapping residues; converting to positive purge equipment and flushing. Also working with Southwest Research to develop fast surrogate test for fibers in drinking water. Board interested in working with AACPP to develop tapping work practices.

November - December, 1982

On December 17, 1981, Staff and Member Company representative (Olson, Baker, and Perrell) met with Water Board officials. The purpose of the meeting was to discuss the Board's continuing interest in development of pipe tapping and flushing procedures, and technical or installation

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San Antonio, Texas

modifications to minimize A/C main breaks resulting from the area's highly expansive clay soil. Additional information forthcoming.

CAPCO JEN 0003998

AGENCY: Wisconsin Department of Natural Resources

ACTION: Informal Policy to Control the Use of A/C Water Pipe

TITLE: Not applicable

FEDERAL REGISTER REFERENCE: Not Applicable

COMMENT DEADLINE: Not Applicable

DESCRIPTION:

Consulting engineers for the City of Forest Junction, Wisconsin, specified A/C pipe for that community's water system. The specifications were forwarded for review by the Bureau of Environmental Health. After review, the Bureau advised the consultants that A/C pipe would be unsuitable material and that three options were available: (1) remove A/C pipe from the specifications, (2) drill another well, (3) treat the well water to an AI of 12.0 or greater.

The Department of Natural Resources apparently uses an Aggressive Index of 12.0 as a cutoff for the suitability of A/C pipe.

STATUS:

January 7, 1980

No action taken since October 21, 1979. Staff has been given approval to determine whether the "policy" might be challenged on procedural grounds.

February 8, 1980

No change in status.

March 31, 1980

No change in status.

April - May, 1980

Staff spoke with Brad Erickson (Sanitary Engineer, Department of Natural Resources) at an EPA meeting in Cincinnati. Erickson confirmed that the Department's position is an informal one. Due to a pending field problem in Weston, Wisconsin, this is due for immediate Staff follow-up.

June 31, 1980

No change in status.

July 31, 1980

No change in status.

August 31, 1980

No change in status.

September 30, 1980

No change in status.

November - December, 1982

Staff was advised by Robert Baumeister, Chief of the Public Water Supply Section, that Dr. William Croft, plaintiff's expert in *Walters et al v. Village of Crivitz and Town of Weston*, is creating political problems for the Department. Croft claims that Baumeister and his staff are not doing their job with respect to regulating asbestos in drinking water or the use of A/C pipe. Baumeister also believes that Croft may attempt to persuade the State legislator from the Wausau (Weston) area to introduce legislation to ban A/C pipe in the State.