

KIRKLAND & ELLIS

Washington Office
Area Code 202 857-5000

1776 K Street, N.W.
Washington, D.C. 20006

To Call Writer Direct
202 857- 5018

May 27, 1980

Chicago Office
Area Code 312 861-2000
Telax 25-4361
200 E. Randolph Drive
Chicago, Ill. 60601

BY HAND

NOTE: Similar letter sent to CPSC.

Mr. Steven D. Jellinek
Assistant Administrator for Toxic Substances
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Jellinek:

The Asbestos Information Association/North America (AIA/NA) is becoming increasingly concerned with EPA's plans for a July 14-16, 1980, "National Workshop on Substitutes for Asbestos" and has asked that I write this letter on their behalf. AIA/NA is persuaded that, unless alternate plans are adopted soon, the Workshop will constitute an unauthorized use of Government funds to promote use of substitutes for asbestos and asbestos-containing products.

EPA should be seeking full and accurate information on asbestos substitutes. Indeed, AIA/NA's comments on EPA's Asbestos Commercial and Industrial Use ANPRM noted:

TSCA mandates that in considering the benefits of chemical use, EPA also assess and determine the availability of substitutes for the chemical. (at 17)

And:

[T]he health consequences of alternative substances are crucial to determination of unreasonable risk [under TSCA].
(at 18)

AIA/NA thus fully supports EPA efforts to explore the technical, economic and medical status of substitutes for asbestos and asbestos-containing products if it is to pursue its announced intention of issuing a TSCA §6 rule on asbestos.

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AIA/NA strongly opposes, however, the format that EPA proposes to use to explore such issues. Based on what we have been able to learn, it appears that the Agency intends to go beyond collection of information and to conduct a session the purpose of which will be to promote use of such substitutes. This implication comes through unmistakably from the draft brochure that indicates among those "who should attend" the Workshop are "purchasers" and "marketing representatives." There is no reason to invite such asbestos customers, unless, as the brochure suggests, their participation is desired at the planned "product review sessions" to which producers of asbestos and asbestos-containing product substitutes are being invited to "exhibit a product or display information." AIA/NA's fears that EPA is staging what amounts to a trade show for competitors of asbestos products are heightened by the Agency's efforts to have its "camera-ready" advertisements for the workshop widely disseminated in the trade press.

Inevitably, EPA sponsorship of such a session would tend unlawfully to discourage asbestos purchases and to encourage sales of competing non-asbestos products. Nowhere in TSCA or other law do we find authorization for such commercial activity by the Agency. Such activity is analogous to the adverse agency publicity enjoined in Silver King Mines, Inc. v. Cohen, 261 F. Supp. 666, 674 (D. Utah 1966), because it was "for the purpose merely of bringing pressure to bear upon those involved in administrative or judicial proceedings in which the [Securities and Exchange] Commission is involved irrespective of any public administrative or judicial finding and as a general enforcement policy." In Cohen, as in other cases, courts have disapproved of Government efforts to adversely affect private parties through publicity and other activities outside statutorily granted procedures. See, e.g., Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951); B.C. Morton International Corp. v. FDIC, 305 F.2d 692 (1st Cir. 1962); GTE Sylvania Inc. v. CPSC, 404 F. Supp. 352 (D. Del. 1975), 443 F. Supp. 1152 (D. Del. 1977), aff'd, 598 F.2d 790 (3d Cir. 1979), cert. granted, 48 U.S.L.W. 3367 (Dec. 3, 1979).

AIA/NA has worked closely with Mr. Richard Guimond of EPA, suggesting names of persons with expertise in various segments of the asbestos industry who might be invited to

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speak at the Workshop. At the same time, we have cautioned him about AIA/NA's concerns as expressed here, that EPA may be going beyond its legitimate information collection role. Although we have been told that EPA is sensitive to these concerns, the program that the Agency is planning, and the publicity that it is generating cannot help but exacerbate our feeling that EPA is going beyond lawful and proper bounds.

To help alleviate the problems noted above, AIA/NA suggests the following guidelines for the conduct of the Workshop:

- (1) The Workshop should not include any Product Review Sessions.

It is difficult to view the Product Review Sessions as other than commercial efforts by EPA to encourage purchase of non-asbestos products. Exhibits and displays are being solicited only from persons with "substitutes for asbestos." We fail to see how such activities will contribute to the proper information-gathering purpose of the Workshop.

- (2) Sufficient time should be allowed for discussion and comment from the audience after each speaker (at least 50% as much time as is allowed for presentations).

As EPA is well aware, the issues to be examined at the Workshop are complex and difficult. Only if there is ample time for dialogue among the persons attending the Workshop will there truly be an opportunity for collection of the desired information. Indeed, unless ample time is allowed for such dialogue, we question whether the sole purpose of the event is to promote the commercial endeavors of parties manufacturing products in competition with asbestos products. EPA could directly solicit information from the speakers without all the arrangements and publicity attendant with a three-day workshop if that is the only source of information it seeks to tap.

- (3) The program should be expanded to encompass the many products being developed by the asbestos industry to foster safer use of asbestos.

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Prominently missing from the Workshop program is any coverage of the development of asbestos-containing products with reduced possibility of hazardous use or misuse. Clearly, such products, and improved methods of use of such products, are "substitutes" for asbestos products of the past.

AIA/NA has been in the forefront promoting safer use of asbestos, as demonstrated most recently by its Recommended Standard for Occupational Exposure to Asbestos in Construction and Other Non-Fixed Work Operations. We believe that any workshop conducted by EPA should include discussion of the many such efforts of the asbestos industry to "substitute" products that use asbestos in a way that eliminates unreasonable risk to the health or safety of those who make or use the products.

Mr. Guimond suggested several days ago that EPA might be interested in conducting a second workshop on essential uses of asbestos. We do not believe that any such efforts could cure the deficiencies in the planned Workshop. The issue of asbestos and its substitutes can only be properly addressed together; separate workshops would confuse, rather than enlighten, the relevant issues. Moreover, any effort, by EPA or any other observer, to limit discussion to "essential" uses of asbestos would, by definition, foreclose relevant issues, rather than encourage their examination.

Only if asbestos and asbestos-containing products and their substitutes are considered jointly will it be possible for EPA to obtain a better understanding of the complex technological, economic and medical issues. If conduct of a useful workshop would require postponement beyond the presently scheduled July 14-16 dates, AIA/NA urges EPA to postpone its session. In any event, we stand ready to continue our assistance to the Agency by suggesting participants who would contribute to proper conduct of a meaningful workshop.

AIA/NA thus remains ready and willing to cooperate with EPA to assist the Agency in obtaining a better understanding of asbestos and the asbestos industry. Our continued cooperation, however, depends on EPA's commitment to a fair and rational evaluation of all issues. Unfortunately,

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the plans for the Substitutes Workshop serve only to confirm our belief that EPA has abandoned science and logic in its quest for media approval and Congressional funding.

Sincerely,

Edward W. Warren
Counsel for the Asbestos
Information Association/
North America

cc: Richard A. Gross

CONSUMER PRODUCT SAFETY COMMISSION

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1500-7; OPTS-61005B]

Workshop on Substitutes for Asbestos; Meeting

AGENCIES: Consumer Product Safety Commission and Environmental Protection Agency.

ACTION: Notice of A Workshop on Substitutes for Asbestos.

SUMMARY: The Environmental Protection Agency (EPA) and the Consumer Product Safety Commission (CPSC) will sponsor a Workshop on Substitutes for Asbestos from July 14-16, 1980. The workshop will be held at the Sheraton National Hotel, 900 S. Orme Street, Arlington, Virginia. There is no charge for admission to this workshop.

FOR REGISTRATION INFORMATION CONTACT:

John B. Ritch, Jr., Industry Assistance Office (TS-799), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Toll-free: 800-424-9065, In Washington, D.C.: 544-1404.

FOR TECHNICAL INFORMATION CONTACT: Hope Pillsbury, Workshop Coordinator (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, 202-755-8023.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to help EPA and CPSC gather information on the current technical and economic issues and potential health hazards relating to substitutes for asbestos and asbestos-containing products. The workshop will be structured so that participants may choose to attend the entire workshop, the technical/economic portion, the health portion, or individual sessions. Participants from industry, academia, government, organized labor, and public interest groups, as well as other interested parties are invited to attend.

At the outset of the workshop, overview talks on technical, economic and regulatory aspects of asbestos substitutes will be presented. These talks will include subjects such as factors affecting speed of technological innovation, problems of market

definition, and the regulatory status of asbestos.

The main body of the technical/economic portion of the workshop will consist of talks on substitutes for the approximately ten asbestos product categories, followed by discussion sessions. There also will be opportunities to discuss broader issues such as the ability of substitute products to meet new or currently existing performance standards.

The second portion of the workshop will focus on health effects of both fibrous and nonfibrous types of substitutes. An overview talk on routes of exposure will be given, followed by talks on epidemiologic and experimental studies that have been made on the various substances that can be used as substitutes for asbestos. Discussion sessions will be included on the agenda.

A session is planned in which manufacturers and other experts on substitutes can inform the two Agencies about the characteristics of products that they make or have studied.

Persons who register by early June 1980 will receive a background information packet prior to the workshop to help them prepare for it.

Dated: May 14, 1980.

Steven D. Jellinek,
Assistant Administrator Office of Pesticides and Toxic Substances, Environmental Protection Agency.

Dated: May 19, 1980.

Dr. Peter W. Preuss,
Deputy Associate Executive Director, Health Sciences, Consumer Product Safety Commission.

[FR Doc. 80-15054 Filed 5-25-80; 8:45 am]

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