FILE NAME: Drywall Spackling Compounds (DWSC)

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September 1, 1977

Secretary
Consumer Product Safety Commission
Washington, DC 20207

Re: Proposal to Ban Certain Patching Compounds and Artificial Emberizing Materials (Embers and Ash) Federal Register, Vol. 42, No. 146, July 29, 1977

Dear Sir:

The above-referenced proposal was published in the Federal Register on July 29, 1977, and interested persons were invited to submit written comments regarding this proposal on or before August 29, 1977.

DAP, Inc. is a manufacturer and distributor of caulking, sealing, glazing, adhesive, and coating products, and is interested in and may be affected by this proposal.

As promised in our August 30, 1977, telegram to the Secretary, DAP submits the following comments to the Consumer Product Safety Commission (hereinafter referred to as "the Commission") and respectfully requests that these comments be considered timely and that they be accepted and considered by the Commission in its deliberations prior to issuance of any final regulation in this matter.

I. Clarification of definition of "patching compound"

The Commission fully recognizes and has stated in the preamble to the above-referenced proposal that "not all patching compounds present an unreasonable risk of injury to the public, only patching compounds containing respirable free-form asbestos." We agree with this statement.

However, the definition of "patching compounds" contained in the Commission's proposed regulation is so broad in scope that it could be construed to include even products not normally considered to be or sold as "patching compounds."

Any broad interpretation of the definition as presently written could, therefore, have a significant and costly impact upon manufacturers of caulks, sealants, and glazing compounds, such as DAP.

The Commission has defined "patching compounds" as follows:

> "Patching compounds" are mixtures of talc, pigments, clays, casein, ground marble, mica or other similar materials and a binding material such as asbestos which are sold in a dry form ready to be mixed with water, or such combinations in ready-mix paste form."

The Commission has further stated that "the product" is used to "cover, seal or mask cracks, joints, holes, and similar openings in the trim, walls, and ceilings, etc. of building interiors." Although the Commission uses the term "the product," seemingly referring to one specific product group (such as spackling compounds), this broad definition, without further clarification, could be interpreted to include almost any caulk, sealant, glazing compound, adhesive, or even coating used in building construction and repair.

All of the products just mentioned, whether containing asbestos or not, are not normally sanded after application. Even if sanding is attempted after application, it would not be beneficial or effective because these products are designed to remain flexible. It would result in nothing more than disfiguration of the applied material.

Spackling compounds and similar wall, floor, and ceiling surface repair products, on the other hand, are not designed to be flexible and are normally required to be sanded after application. The Commission recognized this difference in the products and their methods of application in its first news releases of April 28 and 29, 1977, when it defined the patching compounds to which its proposed ban would be directed as "patching (spackling) compounds" (emphasis added).

The regulation as published, however, has eliminated reference to the specific compounds upon which the Commission originally based its proposed ban. By so doing, the Commission has, perhaps unintentionally, expanded the potential scope of the ban to products that would not release respirable free-form asbestos under reasonably foreseeable conditions of use.

Without further clarification of the definition, consumers will not be able to distinguish between products that contain, and could release, respirable free-form asbestos and those that may not. Lack of such clarification will jeopardize widespread use of industry products, which will directly affect energy conservation.

To assist the Commission in clarifying its proposed ban of consumer patching compounds containing respirable free-form asbestos, DAP offers the following suggested changes:

The second sentence of §1304.1(a), Scope and application, should read as follows:

> "This ban applies to patching compounds which are (1) used to cover, repair or mask cracks, holes, dents and similar surface irregularities in the walls, floors and ceilings of building interiors, which after drying are required to be or are normally sanded to a smooth finish and...."

Section 1304.3(d), Definitions, should be changed to read as follows:

> "Patching compounds" are mixtures of talc, pigments, clays, casein, ground marble, mica or other similar materials and asbestos which are sold in a dry form ready to be mixed with water, or such combinations in ready-mix paste form which are used to cover, repair or mask cracks, holes, dents and similar surface irregularities in the walls, floors, and ceilings of building interiors, and which after drying are required to be or are normally sanded to a smooth finish."

II. Tolerance Level

While we agree with the Commission on the ban of certain consumer patching compounds as stated above, we must point out that the Commission has recognized that asbestos is found in the air, water, and land in minute concentrations. The zero tolerance level inferred in the Commission's proposal is in direct contrast to such knowledge. We call the Commission's attention to the manner in which it handled the lead-in-paint issue and suggest it recognize that there may be some asbestos as an impurity in natural occurring materials. We urge that the Commission consider the regulation of asbestos levels in a manner similar to lead level

regulation in paints in order to recognize the presence of a minute impurity level of this fiber. Once the maximum impurity level is established for affected consumer patching compounds, a method of analysis for both industry and government would be necessary.

III. Effective Date

The Commission's research indicates that asbestos-free consumer patching products can probably be in distribution in approximately six months. The Commission has proposed to ban the manufacture, sale, offering for sale, importation, and distribution in commerce of such products thirty days after publication of a final regulation.

The practical effect of this proposal will be the prevention of further movement of all affected products whether already in the channels of distribution or in manufacturers' finished inventory. The Commission has not explained what becomes of all such finished products if they can no longer remain in commerce. We, therefore, urge the Commission to limit the ban to those consumer patching compounds manufactured more than thirty days following publication of the final regulation.

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As mentioned in our telegram of August 30, 1977, we do not believe that DAP products are affected by the proposed ban. We have submitted these comments to emphasize the need for clarification of the definition of patching compounds and to refine the scope and application of the ban to those products originally announced by the Commission in its April 28 and 29, 1977, releases, namely, consumer patching (spackling) compounds.

We appreciate the opportunity to have presented our comments and, as requested, these comments are submitted in quintuplicate. We apologize for not having filed these comments by August 29, but again respectfully request that they be accepted and considered by the Commission as timely.

Sincerely yours,

Max L. Ostrow

Max L. Ostrow
Attorney

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