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INTERNAL CORRESPONDENCE

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PLAINTIFF'S EXHIBIT

UC-3009

To (Name) Mr. T. Finnigan
Division UCC
Location Washington, DC

Date March 7, 1979

Originating Dept. "Calidria" Asbestos

Answering letter date

Subject Bill HR-1524 Asbestos School Hazard Detection and Control Act of 1979

Copy to Messrs.
R. F. X. Fusaro
E. W. Kantz/R. G. Beverly
J. L. Myers
F. J. Shortsleeve

Dear Tom:

This confirms the points discussed by phone regarding HR-1524 on March 5, 1979. As noted at that time, these represent my own thoughts which, due to the timing involved, have not been reviewed in New York. Please let me know if I can be of any further assistance.

1. The cliché "There is no known safe level of exposure to asbestos" which is basically correct has been extended to the very controversial concept that such a level does not exist, i.e. any exposure to asbestos represents a significant hazard. This extension is a very controversial subject today among responsible authority. The only potential sources of hazard are friable materials which are releasing airborne asbestos fiber or non-friable products which are being reduced to a powder by mechanical means. Undisturbed bound fiber does not represent a problem.

   Parts of the bill appear to recognize this while others imply that all asbestos is, per se, a hazard. The J/M comments on HR-1435 note a number of specific points in the bill where this occurs. If legislation is necessary to supplement the extensive, ongoing efforts of HEW/EPA (and we do not believe this to be the case), it should be tightly drawn to address only the problem of materials which are generating significant quantities of airborne fiber or can be expected to do so in the foreseeable future. Identification of all asbestos whether or not it is a source of airborne fiber is an expensive, time-consuming operation with no payoff in health or safety. It also puts a strain on limited analytical facilities which should be utilized to attack the real problem.

2. Section 2(a) is well covered by the J/M comments on HR-1435 just mentioned. Beyond this,note particularly part (5) which specifically notes, ". . . asbestos materials which have become damaged or friable, from which asbestos is being or may be disloged into the air;" (Emphasis added.) This is a fairly reasonable description of the places where a potential hazard may exist. Any action under the bill should be limited clearly to such places.

3. Section (2)(b)(1) should be restricted to the places meeting the definition under Section (2)(a)(5) and not cover all asbestos materials.

4. Section (2)(b)(4) calls for a fund from "contributions provided by manufacturers of asbestos, . ." (Emphasis added)

   Asbestos is not "manufactured" it is mined and milled to yield fiber. Asbestos containing products are manufactured and are installed by users. More comments on this are provided in the discussion of Section (5)(b).

5. Section 3(a). Why not specifically expand the Task Force to such areas as industry, private research organizations, academia, etc. who have expertise and interests in the problem.

6. Section (3)(d)(4) incorporates the concept of asbestos in advanced stages of disrepair as a criteria for serious hazards worthy of loans. This is good.

7. Section 5(b). This section states, "Any company which has engaged in the mining, manufacture, or importation of asbestos between the years 1946 and 1972 shall make payments into the fund." There are a number of very serious problems with this section as follows:

   a. Asbestos is not manufactured. If it is assumed that the intent was manufacture of asbestos-containing products, the provision would make technical sense.

   b. Only a minor portion of all asbestos used in the country ended up in friable, sprayed products. (A very rough approximation of this figure may be possible to obtain.) Of the sprayable products, a significant proportion were used for steel structure insulation in commercial buildings. This use is generally not related to the school question which is the subject of the bill. What rational, equitable, or lawful basis is there to require the manufacturers of asbestos-cement pipe or brake-linings, to cite two examples, to make substantial monetary contributions after the fact to a fund merely because they have a common raw material which some other manufacturer has used in a totally different product that the government now deems should be investigated. This is ex post facto guilt-by-association carried to the most extreme degree.

c. The uses of asbestos covered by the bill were legal and not regulated at the time they were carried out. Those who actually manufactured and used the products together with an entire industry are being "fined" after the fact for acts which were legal when carried out.

d. The producer of the commodity, asbestos fiber, cannot legally control the end use of his product once it enters commerce. This bill makes the producer financially responsible for actions of others over whom he has no control.

8. Section (5)(b)(2) requires that, "Each manufacturer of asbestos shall make available to the Secretary an audit with accurate accounting of (i) the amount of asbestos products it produced in 1946-1972; (ii) a description of the products and their use; and (iii) other pertinent data as the Secretary may require." (Emphasis added)

Section (b)(3) provides subpoena power to obtain these records.

There are the following problems with these sections:

a. The details of information required are tremendous and far exceed those for TOSCA which covers only one year, not 26.

b. A great majority of the information is not relevant to the subject of this legislation.

c. The records just are not available because:

i. Many of the companies are no longer in business.

ii. Such records were generally not kept or retained for extended periods.

iii. These are construction products and have multiple uses. The manufacturer is frequently not aware of the final use of the product.

9. Attention is directed to Section (10)(d) which defines "imminent hazard to the health and safety". If the word "or" in line 7 could be changed to "and" and the words "reasonably be expected to" are inserted after "could" at the end of line 8, this would give a definition that is a livable compromise. A great improvement would result if some definite concentration figure could be included but selection of such a figure would be very difficult. This definition could be used as the focus of the entire bill, i.e. detection and elimination of imminent hazards.

10. Attention is also directed to Item 12 in the J/M comments on HR-1435. Some good constructive suggestions are provided.

11. Cost sources which can be readily identified include:

    a. The Task Force who's duties generally overlap activities now being conducted by EPA.

    b. The state plan administration required under Section 4(a).

    c. The tremendous amount of records required under sections 5(b)(2) and (3).

    d. The costs of analytical services, particularly if an unrestrictive, "test everything",approach is followed.

H. B. Rhodes

Harrison B. Rhodes

/rmm