



DOW CHEMICAL U.S.A.

47 BUILDING
October 17, 1990

ATTORNEY WORK PRODUCT
ATTORNEY/CLIENT PRIVILEGE

TO: SUPERVISORS/COLLECTORS

RE: COLLECTION OF ASBESTOS RELATED DOCUMENTS

I need your assistance to collect all asbestos-related documents in the Michigan Division for inclusion in a consolidated data base as part of a company-wide defense against asbestos-related lawsuits.

As background, over 1200 individuals have sued Dow within the last two years for injuries they attribute to asbestos exposure while on a Dow site. Some suits result because the asbestos manufacturer and its insurer are no longer solvent and the plaintiffs are looking for a deep pocket. Other suits represent a second wave of cases by plaintiffs who have already recovered from the manufacturers and are now seeking a second recovery.

As part of our defense, I need you to identify all asbestos-related documents in your area. I will also need your verification that you have conducted a thorough, diligent search. There is an excellent chance we can severely limit, if not avoid, future searches if we do a complete job now.

We are conducting a staged document collection. We will begin by concentrating on areas such as Industrial Hygiene where we know there is a concentration of records. We will then go to other areas and all the plants. We plan to conclude all document collection by January 31, 1991. We have set this goal since we realize that it may be more efficient for you to perform the collection as part of your January record retention process.

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The outline attached to this letter describes the types of documents we are looking for, where you might find these documents and how to mark or put the documents aside for input on the data base. Jan Whitfield is the asbestos contact for your department to answer questions and coordinate the document pick up by the Legal Department.

Although we are conducting a staged collection, you may wish to initiate the collection in your area now. If so, please indicate this to your asbestos contact or to Julie Dukes (8-7834) in my office. In any case, please tell your asbestos contact by November 7, 1990 when you plan to complete the document search.

Thank you for your cooperation and we appreciate any suggestions you may have to streamline the process.

Bert N. Butts
Legal Department
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cp
Enclosures

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ASBESTOS-RELATED DOCUMENT COLLECTION

QUESTIONS AND ANSWERS

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1. WHAT DO I NEED TO DO?

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Please initiate all necessary inquiries and searches in your area, and by the people who report to you, to locate and then collect all "asbestos-related documents."

2. WHAT IS AN "ASBESTOS-RELATED DOCUMENT"?

We are defining that term broadly to cover all plaintiff requests in the various lawsuits.

John H. S.

For example, a document includes any writing of any kind, including originals and all non-identical copies (whether different from the originals by reason of notations made on the copies or otherwise). It may include, but is not limited to, correspondence, memoranda, statistics, presentations, notes, letters, contracts, reports, studies, invoices, statements, receipts, inter-office and intra-office communications, printed matter, computer print-outs, electronic communications and storage, other data compilations from which information can be obtained or translated, tapes, work sheets, day planner and log books.

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Examples of where asbestos may be found include, but are not limited to, pipe covering, block, cement, welders' cloth and blankets, felt, cloth, tape, rope, thread, yarn, board, marinate, paper, gasket material, protective aprons, gloves, building insulation, transite pipes and board (some lab hoods and countertops may also be made of transite that contains asbestos), ceiling and floor tiles, electrical insulation, plaster, fireproofing, drywall products, paints and sprays. Terms for types of asbestos include amosite, anthophyllite, chrysotile and crocidolite.

The document is asbestos-related if it refers to "asbestos" in any way including, but not limited to, its uses, its presence, its potential health effects or its safe handling. If the document has "asbestos" anywhere on it, it is an "asbestos related document." However, a document may be asbestos related even if it does not specifically use the word asbestos (For example, where someone described the potential problems of removing insulation from a building because of the presence of asbestos without mentioning "asbestos").

Asbestos-documents may include references to circumstances where:

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- a. Asbestos products were found in areas when a pipe or wall was uncovered, and asbestos insulation was revealed;
- b. Asbestos gaskets were removed or replaced, or where there was a plan to remove them;
- c. Asbestos was disposed of;
- d. Persons supervised, or contracted with others to perform the removal of products containing asbestos;
- e. Persons suspected that asbestos was or is present;

3. WHERE AM I LIKELY TO FIND ASBESTOS-RELATED DOCUMENTS?

While not all-inclusive, the following are examples of areas where you may find asbestos-related documents: maintenance reports/procedures, construction records, safety records/ incident reports, plant logs, industrial hygiene reports, instruction manuals, presentations, personal notes, equipment inventories, NESHAP notifications, treatment/ disposal permits, landfill invoices, SARA 311, 312, 313 reports and notifications, annual emission surveys, safety

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meeting notes, plant libraries and tech centers, purchasing documents, engineering drawings and blueprints, demolition projects, authorization requests, specifications for equipment, piping, electrical insulation, and lab reports on the quality or durability of asbestos containing materials.

4. WHAT DO I DO WITH ASBESTOS-RELATED DOCUMENTS WHEN I FIND THEM?

We suggest two options on how to mark and segregate these documents. You can keep the documents in the file and flag them with a Post-it or some other easy means of identification, and then record the file location of the document. Alternatively, you can remove the documents from the file for collection, noting the original location. If you have files that are predominantly asbestos-related, it may make sense to mark or remove the whole file and have it available for collection. Please record each document's custodian if you collect documents in a central location.

5. WHO DO I CONTACT AFTER I HAVE LOCATED, MARKED AND SEGREGATED THE DOCUMENTS?

After you have completed the identification process in your area, contact your asbestos contact. They will contact the Legal Department and make arrangements for Dow's Legal

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Document Processing Section (LDPS) to visit you to retrieve the documents.

6. HOW WILL THE COLLECTION PROCESS WORK?

After LDPS is told that you have asbestos-related documents in your area, they will visit you to remove the original document, number and photocopy it. They will then return the numbered copy to you for reinsertion in your file. They will retain the original for input into the data base. By numbering the original and returning a copy, we will be able to spot in the future whether the document was previously produced. Also, you will be able to perform the normal Records Retention on the numbered copies in your possession since LDPS will maintain the original for production as lawsuits demand it.

7. WHAT DO I DO IF GOVERNMENT REGS OR DOW POLICY PROHIBIT THE REMOVAL OF THE ORIGINAL DOCUMENTS OR IF THE ASBESTOS-RELATED DOCUMENT IS ONLY ONE PAGE IN A LARGER DOCUMENT, i.e., A PAGE IN A LAB NOTEBOOK?

In cases where we cannot remove the originals or where it is impractical (a single page in a large bound notebook), LDPS will photocopy the numbered original and retain the photocopy. In that case, the original will remain in your

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possession and will remain subject to the normal Records Retention policy. However, the originals should be turned over to the Legal Department for insertion in the data base when it is time to destroy it under the Records Retention policy.

8. DOES THIS MEAN WE HAVE A RECORDS FREEZE ON ASBESTOS-RELATED DOCUMENTS?

While we have not yet instituted a formal freeze, you should not destroy any asbestos-related documents pending the creation of the data base. Therefore, please collect all asbestos-related documents regardless of whether they exceed the records retention guidelines. After we input the documents on the data base and return the stamped photocopies to you, you should subject the photocopies in your possession to the normal Records Retention schedule until you hear otherwise. Again, all stamped originals should be delivered to the Legal Department when they become subject to destruction under the Records Retention schedule.

9. SINCE YOU ARE CONDUCTING A STAGED COLLECTION, SHOULD I WAIT FOR YOU TO CONTACT ME BEFORE STARTING THE DOCUMENT SEARCH IN MY AREA?

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No. We are initiating a staged search because we know there are certain areas like Industrial Hygiene where there is a concentration of asbestos-related documents. We want to target our resources on those areas because they will be the most productive in generating documents. From Industrial Hygiene we will go to other likely locations, like the Medical Department, Environmental Services, Maintenance and Materials R&D.

In the meantime, please inform your asbestos contact by November 9, 1990 when you plan to complete the document collection in your area. Then start the search. We need to finish this project by January 31, 1991. When you have completed the search or have completed it for specific portions of your organization, contact your asbestos contact again and we will have the people from LDPS come out and retrieve the documents.

10. SHOULD I COMBINE THIS WITH MY NORMAL YEAR-END RECORD RETENTION AUDIT?

Our goal is to collect the documents in the most efficient and thorough manner possible, with the least disruption to normal business. If you have a planned Records Retention audit before January 31, 1991, combine the two if that makes sense for your area. If your records retention audit occurs

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after January 31, please do not delay the document collection. Remember, we are in the process of defending over 1200 claims throughout Dow USA and the sooner we complete our data base, the closer we will be to meeting this challenge.

11. WHAT SHOULD I DO IF THE ASBESTOS-RELATED DOCUMENTS CONTAIN PROPRIETARY INFORMATION?

You should have your people mark any proprietary information contained on asbestos-related documents. The people from LDPS will note this when they input the documents on the data base. This will allow Dow to request appropriate protective orders or file the necessary objections if these documents are requested in a lawsuit.

12. WHY DO WE HAVE TO DO THIS? IS IT REALLY NECESSARY?

This is not a make work project. Many people have sued asbestos manufacturers because of injuries they attribute to asbestos exposure. We are now witnessing a second wave of litigation: a growing number of persons suing companies like Dow where the asbestos was present and the alleged exposure occurred. Some individuals are bringing these lawsuits because the asbestos manufacturer and its insurance company have gone bankrupt. In other cases, the plaintiff

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has already recovered from the manufacturer and is now seeking a second recovery.

In order to limit the number of times we must go back and search our files, we need to do an all-inclusive search right now. Judges are giving plaintiffs wide discovery in these lawsuits due to the substantial injuries alleged and the charges of negligence, conspiracy and cover-up against the defendants. California suits are put on a "fast track" for trial within a year if the plaintiff is alive.

The plaintiffs have the right to compel companies like Dow to produce all documents relevant to, or that would lead to the production of documents relevant to, their lawsuits. We now have over 1200 claims and expect filings to continue over the next 20 years. Therefore, it is crucial to have a uniform data base so we can meet the legal requirement to produce relevant documents and we can ensure we are answering the requests for documents uniformly throughout the country, and over time.

In addition to the legal duty to respond, attorneys representing the plaintiffs are extremely well organized. We believe that plaintiffs' attorneys in Texas compare our answers with those we give to attorneys in California, Louisiana or Michigan. We must answer each request in a

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uniform manner or have a very good explanation for the difference.

If we uncover documents in the future that were responsive to, but were not produced under prior requests, we are under a legal duty to supplement our response and produce the new documents. Courts have shown an increasing tendency to impose sanctions and punitive damages on defendants whom they feel purposely hid documents from discovery, or whom they feel did not make a diligent search for documents.

13. WHY DO I NEED TO SIGN A VERIFICATION?

We are asking people to sign a verification to document that Dow conducted a thorough and diligent search for all asbestos-related documents. As previously mentioned, courts have shown an increasing tendency to impose sanctions and punitive fines on defendants who were either negligent in their document searches or whom the courts suspect of deliberately hiding documents.

14. I CONDUCTED A THOROUGH SEARCH IN 1988 IN RESPONSE TO A LAWSUIT. WHY DO I HAVE TO REPEAT THIS?

In 1988 we responded to a production request in a lawsuit where we were not a party. We are now receiving requests.

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which are much broader and we are a defendant. In 1988, we also did not collect the originals and mark them in a way that will fit the needs for a centralized data base for current and future defenses.

15. HOW WILL YOU HANDLE THE GENERATION OF ASBESTOS-RELATED DOCUMENTS IN THE FUTURE?

We will need to continue to collect "asbestos-related" documents as they are generated. As you generate or come across future asbestos-related documents we request that you send the document to Division Counsel. We will have LDPS number the document and return a numbered copy to you. If the original cannot be removed then notify Division Counsel and we will arrange for LDPS to come to number the document and copy it for the data base. For documents CREATED AFTER NOVEMBER 1, 1990, you should only send us asbestos-related documents which you would normally make a part of your file. For example, short term telephone or meeting notes which you would normally discard, and which you would not otherwise make part of one of your files, need not be sent to Division Counsel; if they are created after November 1, 1990. We still want "short term documents" if they were created prior to November 1, 1990. Also, we will only need one copy of a multiple mailing with the distribution list.

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16. WHAT DO WE DO ABOUT SATELLITE SITES (I.E. LUDINGTON AND BAY CITY) AND DOCUMENTS WE INHERITED FROM SUBSIDIARIES OR ACQUISITIONS?

Because of the geographical distance, we will need to make special accommodations for Ludington and Bay City. Those sites should go ahead with the collection process as they do their Records Retention audits and understand that we may not start the document retrieval until the end of the year. We still want to finish those sites by January 31, 1991.

With regard to documents that are originally non-Dow (e.g. Texize, Boride Products or other acquired sites), you should collect asbestos-related documents if you are the custodian responsible for doing a Records Retention audit on those documents. However, keep these documents segregated from Dow generated documents, since much of the potential liability on asbestos revolves on what people knew when. Please indicate to your asbestos contact if you have asbestos-related documents from another source (like the MCV or Boride Products for example).

17. DO ASBESTOS-RELATED DOCUMENTS INCLUDE REFERENCES TO ASBESTOS IN TEXTBOOKS OR SCIENTIFIC ARTICLES?

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We are not interested in reference to asbestos in textbooks or published articles if they are non-Dow generated.

However, if you have copied an article or portions of a textbook which refers to asbestos and made that copy a part of your file then the copy should be included in the data base. Also, if there are references to these articles in your notes or in building or equipment specifications or health reports, the Dow generated documents that make the references should be included in the data base.

18. ARE WE THE ONLY DIVISION CONDUCTING THIS SEARCH?

No. Each division is going through a similar process. In addition, there will be document collection in corporate areas like Health & Environmental Sciences and the Abbott Road complex.

19. WHAT DO I DO IF I HAVE QUESTIONS ABOUT A DOCUMENT OR THE PROCESS?

If you have questions about a document, mark it for production and the people from LDPS can make the determination whether it is asbestos-related. If you have questions about the process or anything else connected with this exercise, please call your asbestos contact or Julie

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Dukes in Division Legal (8-7834). They will get an answer back to you.

20. WHAT WILL HAPPEN IF WE FIND ADDITIONAL DOCUMENTS AFTER THE COLLECTION PROCESS IS OVER?

If you come upon a document after the collection process is over, contact the Legal Department. No matter how careful we are to collect all documents, some, though hopefully not many, will slip through the cracks. While we must make every effort to avoid this, if they show up later we will have to use our computerized discovery response system to identify where we should have produced the document and supplement our production in that case.

21. IS THERE ANY WAY I SHOULD MARK MY COMMUNICATIONS IN THIS PROGRAM?

Yes. Please mark all written communication pertaining to this document collection effort (NOT THE ASBESTOS RELATED DOCUMENTS) as "Privileged: Performed At The Request of the Dow Legal Department."

B.N. Butts
Legal Department

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