PLAINTIFF'S EXHIBIT

CHV-620

INTERNAL CORRESPONDENCE

METALS DIVISION

P. O. BOX 579 · 4625 ROYAL AVE., NIAGARA FALLS, NEW YORK 1

To (Name) Mr. J. L. Myers - Niagara Falls
Division Mr. G. Rouse - San Francisco
Location

Date January 26, 1979

Originating Dept. "Calidria" Asbestos

Answering letter date

Copy to Messrs.
R. E. Byrne, Jr. - Niagara
R. F. X. Fusaro - NYO - 47th Fl.
E. W. Kantz/R. G. Beverly- Grand Junction
E. W. Shortridge - King City
F. J. Shortsleeve - NYO - 38th Fl.
E. R. Weidlein, Jr.- NYO - 18th Fl.

Subject Asbestos Regulatory Developments in California

050.1000
LETTER
3-7-79
Calidria-

On November 8, 1978, Union Carbide and other interested companies testified before the California Occupational Safety and Health Standards Board in a hearing on regulations to permit the continued use by spraying of certain products containing wetted and encapsulated asbestos fiber. Dr. Fred Ottobani, a senior employee of DOSHA, was designated as the technical adviser to the Board with the specific task of assessing the testimony and providing recommendations. A call was made on Dr. Ottobani on January 17, 1979 to determine the status of his evaluation.

Dr. Ottobani reported that he intended in the next several days to write his report. Basically, it would make the recommendations that the spray plaster application should be phased out over the next several years but that he didn't see any problems with the wetted and encapsulated products. Their continued use should be permitted.

Dr. Ottobani also provided the very disturbing news that, under heavy pressure from Federal OSHA and the Unions, DOSHA was planning to reduce the "action level" for medical examinations from the present 1 fiber/cc TWA to any exposure to asbestos. Drafting on this is in progress. It is planned to combine this change with the spraying changes and have another Standards Board hearing in the Los Angeles area in the near future. There are, or will be, four-five new members of the Standards Board replacing those to whom we made our presentation in November. In effect, this puts us back at the starting point again with a new Standards Board of unknown objectivity. We are also combined with an emotional and controversial issue. Time is running out for the asbestos users and they must begin to stop manufacturing products that may potentially be banned so they are not caught with them in inventory. There is also the distinct possibility that the changes relative to medical examination requirements could interact with the spraying changes in a way that would reduce the maximum allowable exposures for sprayed product to zero. In many cases this would be equivalent to a ban.

CHEV
BB 010318

CH 00898

The problem has been discussed in detail with Mr. Glen Rouse and he has made initial contact with Mr. Bill Steffan who is drafting the regulatory changes for medical examinations. An information package prepared for Mr. Rouse and a tentative course of action is attached. Basically, the aim is to avoid drafting changes which negate our previous efforts for sprayed products, to expedite the issuance of viable regulations for sprayed products in accordance with our prior testimony, and to avoid, if possible, becoming enmeshed in the medical examination controversy to the detriment of the sprayed products effort. It is anticipated that Mr. Rouse will be the primary contact with the regulatory personnel. The writer will be involved as necessary and appropriate. Close communications will be maintained.

H. B. Rhodes

Harrison B. Rhodes

/rmm
Attachment

CHEV
BB 010319

KEY FEATURES OF REGULATORY CHANGES

Copies of both the DOSHA and Federal OSHA Asbestos Regulations are attached for reference (Attachments I and II). The push by DOSHA is to bring these regulations into conformance. The key areas of concern are as follows:

Medical Examinations

Section (j)(3) of the Federal Regulations states in part:

> "(3) Annual examinations. On or before January 31, 1973, and at least annually thereafter, every employer shall provide, or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers." (Emphasis added)

Similar exposure requirements apply to preplacement and termination examinations.

Paragraph (j)(1) of Section 5208 of the California Regulations provides:

> "(1) The employer shall provide or make available at no cost to the employee a comprehensive preplacement medical examination by a licensed physician for each employee engaged in an occupation where exposure to airborne asbestos, without regard to the use of respiratory protective equipment, has been determined to exceed, or may be reasonably expected to exceed, an 8-hour time-weighted average concentration of 1 fiber, longer than 5 micrometers, per cubic centimeter or a ceiling concentration of 10 fibers, longer than 5 micrometers, per cubic centimeter." (Emphasis added)

California also has similar requirements for annual and termination examinations.

Monitoring Requirements

Federal OSHA requirements under Section (f) are:

> "(f) Monitoring - (1) Initial determinations. Within 6 months of the publication of this section, every employer shall cause every place of employment where asbestos fibers are released to be monitored in such a way as to determine whether every employee's exposure to asbestos fibers is below the limit prescribed in paragraph (b) of this section." (Emphasis added)

> "(ii) Sampling frequency and patterns. After the initial determinations required by subparagraph (1) of this paragraph, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling be at intervals greater than 6 months for employees whose exposures to asbestos may reasonably be foreseen to exceed the exposure limits prescribed in paragraph (b) of this section." (Emphasis added)

KEY FEATURES OF REGULATORY CHANGES (Cont'd.)

Monitoring Requirements (Cont'd)

The essential features include an initial monitoring at "every place of employment where asbestos fibers are released" and repeat monitoring where exposures "may reasonably be foreseen to exceed" the exposure limits of 2 fibers/cc TWA or 10 fibers/cc ceiling. It would appear from this that if the initial monitoring shows that asbestos fibers are released at the place of employment, medical examination requirements under Section (j)(2) are triggered.

Section 5208 of Paragraph (j)(1) of California regulation provides:

> "(1) Monitoring. (A) The employer shall sample the air and determine the concentration of asbestos fibers within the breathing zone of employees whose exposure to airborne asbestos may exceed an 8-hour time-weighted average concentration of 1 fiber, longer than 5 micrometers, per cubic centimeter or a ceiling concentration of 10 fibers, longer than 5 micrometer,s per cubic centimeter due to work assignment(s) at or near operations with asbestos or asbestos-containing products which result in the release of asbestos fibers." (Emphasis added)
>
> "(C) Monitoring shall be repeated at least once every 6 months where exposure to airborne asbestos may exceed an 8 hour time-weighted average concentration of 1 fiber, longer than 5 micrometers, per cubic centimeter." (Emphasis added)

Here, too, the initial monitoring requirement is tied to work locations and assignments where conditions "result in a release of asbestos fibers". It is, however, not just any release but a release which "may exceed" a level of 1 fiber/cc for the TWA or 10 fibers/cc for the ceiling. The California version is less stringent than the Federal for initial monitoring (1 fiber/cc vs any "exposure") and more stringent for continued monitoring (1 fiber/cc vs 2 fibers/cc).

Statutory Requirements Imposed by SB-1591

SB-1591, which is in large part the result of our efforts in the last session of the legislature, contains the following kind of wording for each of the three classes of products for which exemptions are sought:

> "(2) Pursuant to the provisions of Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code, on or before June 1, 1979, the Occupational Safety and Health Standards Board shall conduct public hearings for the purpose of establishing classifications of use of products defined in paragraph (1) of this subdivision which are exempt from the prohibition of subdivision (a). The board shall, on or before July 1, 1979, establish by regulation such classifications, if any, of the use of products defined in paragraph (1) of this subdivision which the board determines are

CHEV
BB 010321

KEY FEATURES OF REGULATORY CHANGES (Cont'd.)

Statutory Requirements Imposed by SB-1591

exempt from the prohibition of subdivision (a). After July 1, 1979, the board may, after public hearings, amend, add, or repeal such regulations.

During any use, spraying, application,, handling, storage, repair, disposal, processing, or transportation of such products, the person who causes or permits such acts pursuant to an exemption provided in, or adopted pursuant to, this subdivision shall comply with the provisions of Section 5208, Title 8, California Administrative Code as it exists on the effective date of the amendments to this section enacted by the Statutes of 1978 or may , thereafter, be amended. However, on or before July 1, 1979, the board shall adopt regulations, and make such regulations operative on July 1, 1979, to establish the time-weighted average concentration limits for employee exposure to airborne asbestos fibers arising from any use, spraying, application, handling, storage, repair, disposal, processing, or transportation of exterior and interior coatings and laminating resins containing asbestos fibers contained within the finished product from manufacture through application, and cold process asphalt roof coatings pursuant to an exemption adopted pursuant to this subdivision at levels no higher than the levels contained in subparagraph (A), paragraph (1), subdivision (g) of Section 5208, Title 8, California Administrative Code, as it exists on the effective date of the amendments to this section enacted by the Statutes of 1978 or as such regulations may, thereafter, be amended." (Emphasis added)

The problem here is obvious. If Paragraph (g)(1), which relates to initial monitoring is changed to conform to the Federal requirements, i.e. of any release of asbestos, it is effectively a ban on the use of sprayed products. The legislative intent was to require an added margin of safety and the mechanics of keying it to the "action level" for monitoring seemed to be a simple and direct approach. In retrospect, it may have been better to try to incorporate a specific fraction of the allowable exposure level into the bill. This, however, would have introduced the need to negotiate to an acceptable fraction which is another controversial technical issue of the kind that the legislature was trying to transfer to the Standards Board.

ADDITIONAL BACKGROUND INFORMATION

The Labelling Inconsistency

Both the California and Federal regulations require labelling of anything containing asbestos except where the fibers have been modified by a bonding agent so that under any reasonably foreseeable conditions the item will not result in a fiber release in excess of either the 2 or 10 fiber/cc limits.

ADDITIONAL BACKGROUND INFORMATION (Cont'd.)

The Labelling Inconsistency (Cont'd.)

Products for which the user may be subject to both monitoring and medical examination requirements are thus not required to be labelled by the manufacturer. This leaves the question of how the user is expected to know he has regulatory obligations unanswered.

This problem arose because asbestos was the first health standard promulgated by OSHA. Subsequent carcinogen regulations have generally handled it by setting an allowable exposure level, defining one-half of this level as the "action level" and triggering all compliance requirements by the action level. We have been hopeful that the Industry could get this sort of thing fixed during the proceedings for the revision of the Federal Standard proposed on October 9, 1975. As you know, this proceeding is still on dead center with no indication when OSHA will move forward on it.

The Analytical Measurement Problem

Both the Federal and State regulations require that asbestos exposure be measured by the collection of an air sample on a filter with subsequent counting of fibers by phase-contrast microscopy. The method is not particularly accurate at concentrations in the 2-10 fiber/cc range and becomes increasingly erratic as concentrations decrease.

Federal OSHA has taken a position that the limit of detection by this method is 0.1 fiber/cc. Accordingly, they have "administratively interpreted" for compliance purposes that "exposure to asbestos" is equivalent to exposure to a 7-8 hour time-weighted average of 0.1 fiber/cc or greater. (Copy of Program Directive included as Attachment III.)

There are solid technical grounds to refute the 0.1 fiber/cc detection limit but these are not yet in a form to present. We would not endorse the validity of a 0.1 fiber/cc definition of exposure but it is certainly better than a vague "any exposure" criterion.

The problem is futher complicated by the fact that asbestos is ubiquitous in nature and can be detected (as opposed to being accurately measured) in every workplace. There is no way to tell whether any minute amounts that may be found are released at the place of employment or blew in with the general atmosphere. We feel that now that the problem is recognized, it is inappropriate to perpetuate this kind of vagueness in further regulations.

SUGGESTED COURSE OF ACTION

Based on this background the following course of action is suggested. Obviously, adjustments will have to be made as the situation develops.

With Bill Steffan

1. Find out whether they are going to the "any exposure" ~~on~~ or the 0.1 fiber/cc TWA as the criteria for medical examinations.

SUGGESTED COURSE OF ACTION (Cont'd.)

With Bill Steffan (Cont'd.)

2. If it is the "any exposure", how do they plan to handle the problem of the analytical limitations and the ubiquitous nature of asbestos? Will they use the Federal OSHA administrative determination of 0.1 fiber/cc?

3. Specifically, what other changes are planned, particularly with respect to the initial monitoring requirements of Paragraph (g)(1)(A)?

4. If they are going to change the initial monitoring requirements in a manner that negates the efforts to obtain Standards Board approval for the continued use of appropriate sprayable products, we probably need to make them aware of the added consequences of this change. The Summary and Conclusions for the written testimony presented at the November 8 hearing outlines results of such changes and is provided for your convenient reference as Attachment IV. (You should have a copy of the complete presentation.)

Basically, I feel that we could live with, but would not endorse, the change in the medical examination requirements but would strongly oppose anything that prevented the continued use of the sprayed products for which exemptions have been sought. If they are amenable to discussion, the spraying matter could be handled mechanically by inserting a new Paragraph g(1)(A) to refer specifically to allowable limits during spraying, change the present (A) to (1)(B) and modify it to cover whatever new initial monitoring requirements are imposed, and renumber the present (1)(b), (C), (D), and (E) to 1(C), (D), (E), and (F).

With Don Vial

1. Express our serious concern about the timing problem. There is a July 1, 1979 ban on approximately $9,000,000 per year of products, many of which have a critical importance to the construction industry, and have no known substitutes of equivalent performance.

2. There has been a regular Standards Board hearing in this matter with no environmental opposition and controversy only on the availability of substitutes for one type of product, Portland cement plaster. The record of this hearing is available.

3. We understand (and hopefully will have available) a favorable report on the products of main interest from Dr. Ottobani, the designated technical consultant to the Standards Board on the spraying matter, that recommends permitting their continued use.

4. If the new changes relative to the exposure level for monitoring negate the continued use of the sprayable products, he should probably be made aware of this and the need to avoid it.

CHEV
BB 010324

SUGGESTED COURSE OF ACTION (Cont'd.)

With Don Vial (Cont'd.)

The main thrust should be that time is running out on an important segment of California industry. A non-controversial (as far as the products of our immediate interest) hearing has been held and a favorable recommendation has been made to the Standards Board by their staff. We believe that this is a sufficient basis, particularly in view of the statutory deadline, for the Standards Board to act promptly without another hearing. The viability of this approach obviously depends on the extent of the problem that may or may not be introduced by other changes due to the medical surveillance modifications.

With Ron Rinaldi

Mr. Rinaldi is the Executive Officer for the Standards Board. (Present membership of the Board shown in Attachment V.) It is my understanding that his present position is on a holding basis until the new Board is completed and organized. If this is correct, he will probably want to keep a very low profile and not make any waves.

In view of the above, it is suggested that you try to stop by and make his acquaintance while in Sacramento the week of 29th. Express our concern about meeting the July 1, 1979 deadline and the large impact if we don't. Seek any information he will provide about future actions on the matters of interest to us.

HBR/rmm