

Enclosure 3

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, D.C. 20510

May 4, 1984

The Honorable William B. Ruckelshaus
 Administrator
 U.S. Environmental Protection Agency
 Washington, D.C. 20460

Dear Mr. Ruckelshaus:

Positions taken recently by the Office of Management and Budget prompt us to reiterate to you the important role the Toxic Substances Control Act (TSCA) is intended to play in dealing with occupational hazards.

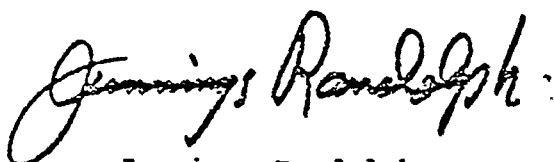
There can be no doubt that TSCA is aimed at occupational as well as other risks. The Act's findings cite unreasonable risk from the manufacture and processing of chemicals, as well as from their distribution in commerce (section 2(a)(2)). The fundamental reason that the Act requires pre-manufacturing, as contrasted with pre-marketing, information on new chemicals is to assure protection of workers. The Act requires pre-manufacturing notifications of chemicals to include information on "the number of individuals exposed...to such substance or mixture in their places of employment" (sections 5(d)(1) and 8(a)(2)(F)). The basis for regulating new or existing chemicals under the Act includes unreasonable risk from manufacture or processing, as well as from distribution in commerce, use, or disposal (section 6(a)).

Section 9(a) of TSCA sets forth a mechanism for coordination with other agencies, not a general proscription against use of TSCA authorities in areas of overlapping authority. It clearly does not preclude action under TSCA merely because another agency also has the authority to respond. In fact, the Administration originally proposed an amendment to bar the use of TSCA when the Occupational Safety and Health Act could be used to regulate a particular risk, but later withdrew that proposal in favor of a coordination mechanism like that in present law. The purpose of this coordinating mechanism, according to the conferees, is to "give the other agency an opportunity to act to protect against the risk before the Administrator uses the authorities in section 6 or 7 (of TSCA) to protect against the risk."

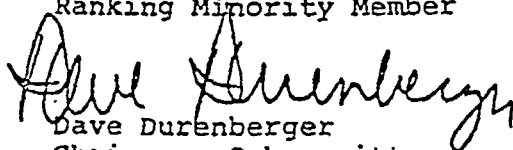
Whenever the Administrator identifies an unreasonable risk from the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance, section 9 accords the flexibility to determine, "in his discretion", whether action under a law administered by another agency may reduce sufficiently the risk. This determination is not subject to judicial review. Even when the Administrator refers an unreasonable risk to another agency, EPA is precluded from acting under TSCA only if the other agency initiates action to regulate the chemical within ninety days or issues an administrative order declaring that EPA was mistaken in identifying the risk.

Further, the authority to deal with occupational risks and the relationship of TSCA to the Occupational Safety and Health Act is explicitly covered in section 9(c) of TSCA. The purpose of section 9(c) is to assure that TSCA regulatory actions are not interpreted to preempt action under the Occupational Safety and Health act. This provision which would be meaningless if the Congress did not intend the EPA Administrator to use TSCA to regulate occupational risks. Also, section 9(d) requires consultation with the agencies in order to achieve "maximum enforcement" of TSCA while minimizing duplicative requirements.

Beyond the need to avoid needlessly duplicative regulation, it obviously would be poor public policy to forego regulation of a recognized unreasonable risk using TSCA merely because another statute could be used, without regard to whether it actually will be used immediately to regulate the risk. The Federal government should use any available authorities, separately or in combination, that will expeditiously protect public health and the environment whenever such a risk is identified. When the TSCA regulatory authorities can be brought to bear on an occupational risk, their use should not be precluded by a misunderstanding of their scope or of the intent of the coordination provisions of section 9.

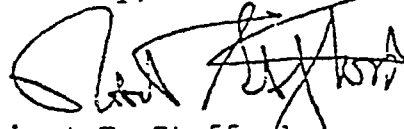


Jennings Randolph
Ranking Minority Member



Dave Durenberger
Chairman, Subcommittee
on Toxic Substances and
Environmental Oversight

Sincerely,



Robert T. Stafford
Chairman



Max Baucus
Ranking Minority Member
Subcommittee on Toxic
Substances and Environmental
Oversight



A/C Pipe
Producers Association

MINUTES

The AACPP Public Affairs Committee and Technical Affairs Committee met in joint session on Monday, May 3, 1982 at 1:45 p.m., at the Sheraton Cancun Hotel, Cancun, Mexico, the Chairman being in the chair and the Secretary being present. Attendees were:

<u>Chairmen</u>	<u>Members</u>	<u>Staff</u>	<u>Guests</u>
Olson	Baker	Welch	van der Rest
Verploegh	Perrell	Rahn	Pattabhi
			Giboin
			Al-Tarkait

I. Call to Order

The Chairmen declared a quorum present and called the meeting to order.

II. Reading and Approval of Minutes

A motion was made and passed "... that the reading of the 10/13/81 minutes be dispensed with and approved as distributed."

III. Review of Agenda

The meeting agenda was reviewed and the order of business modified as follows.

IV. Report of Officers

A. Chairmen's Report

None.

B. Staff Report

None.

V. Priority List

A. Revised Strategic Operational Plan

1. AACPP Resources and Organization

Staff explained that on January 20-21, 1982 the Executive Committee met to revise AACPP programs and priorities to be more responsive to the weak business outlook and reduced corporate resources. Under the revised Strategic Operational Plan, the defense of existing municipal (water pipe) markets against the encroachment of competitive products and adverse legislation would take precedence over other activities. Further, it was reported that program authority heretofore vested in the Public Affairs and Technical Affairs Committees would be transferred to the Executive Committee effective May 3, 1982.

2. Public Affairs Programs

a. Disposition of PAC-01-80 (Regulatory Affairs Program)

It was explained that PAC-01-80 would be effectively terminated upon completion of the Kirkland & Ellis position papers on asbestos exposures during A/C pipe manufacturing and installation. In the future, activities related to developing an affirmative case for the A/C pipe sector in EPA, OSHA or CPSC rulemakings would be coordinated by AACPP Staff with AIA/NA in an administrative manner rather than a programmatic one.

b. Disposition of PAC-02-80 (Public Education Program)

Staff reported that AACPP terminated its contract with Lewis & Gilman (public relations counsel) and selected program elements (A/C Advisory, trade releases, AWWA Seminars) would be integrated into PAC-01-82. (see below)

c. PAC-01-82, Municipal Market Program (formerly PAC-05-81)

Staff explained that the rationale for this program was embodied in PAC-05-81 (Targeted Seminar Program). It was reported that the Executive Committee felt that AACPP's visible presence with key municipal accounts would be a prime influence in stabilizing market conditions. Staff reported that key account priorities were being resolved and hand-out materials assembled; program kick-off is scheduled for late June, 1982.

d. PAC-02-82, State Monitoring Program (formerly PAC-04-81)

Staff reported that this program was fully onstream and working well in monitoring regulatory and legislative activities in core market areas (California, Texas, Arizona).

3. Technical Affairs Programs

a. Disposition of TAC-02-80 (Transient Asbestos Program)

Staff reported that the research portion of this program was complete and data analysis and final report preparation would be finished by July, 1982.

b. Disposition of TAC-04-80 (Technical Information Program and Services)

It was reported that TAC-04-80 would be terminated; Staff was charged with reviewing AACPP's commitment to preparing an A/C Pipe Handbook.

c. TAC-01-82, Municipal Analysis Program (formerly TAC-02-81)

Staff reported that the municipal survey was concluded in March, 1982. Case studies of ten municipalities using A/C water pipe were distributed to TAC members; a summary report was reported to be in progress. Data from this program will be used to support technical/marketing components of PAC-01-82, Municipal Market Program.

d. TAC-02-82, San Antonio Flexural Evaluation

Staff reported that meetings were held with the San Antonio Water Board and Southwest Research Institute (SRI) for the purpose of developing a proposal to research alleged A/C pipe flexural failures in that city. Further, Staff reported that the preliminary cost of such an evaluation appeared to far exceed the Association's financial capabilities and that alternate measures would be explored. Both Committees expressed an interest in receiving copies of the SRI proposal for review and comment before any additional action is taken.

VI. Old Business

A. Public Affairs Committee

1. Field Problems and Litigation

A Field Problems and Litigation Status Report (enclosed) was distributed and reviewed with minor comments.

2. Industry Response to Kanarek-Conforti Article on Corrosion of A/C Pipe

Staff distributed for comment by May 21, 1982, a review of the Kanarek-Conforti article alleging corrosion of A/C water pipe and asbestos release in non-aggressive waters in the San Francisco Bay Area.

3. American Water Works Association (AWWA) Ad Hoc Committee on Asbestos in Drinking Water

Staff reported that the proposed policy statement on asbestos in drinking water currently is being balloted in the AWWA Water Quality Division. According to AWWA staff reports, a final approval is expected in January, 1983.

4. Workers' Right to Know Legislation

Staff reported the emergence in several states of requirements for manufacturers to supply material safety data sheets for toxic substances (e.g. asbestos) and products containing toxic substances (e.g. A/C pipe). Such requirements also were reported to carry additional burdens of employee education and training. Particular mention was made of pending requirements in California. Staff said it would coordinate AACPP efforts on such matters with AIA/NA.

5. Letter to Environmental Protection Agency

PAC Chairman Olson requested Staff to send a letter to EPA's Municipal Environmental Research Laboratory stating that its publications create a false impression about the corrosion of A/C pipe, i.e. that release of asbestos from A/C pipe is a health hazard and that any pipe softening (corrosion) releases asbestos. Support for such a letter also was voiced by the International Members present.

B. Technical Affairs Committee

1. Standards Update

Chairmen Verploegh and Olson reviewed status of ASTM, AWWA, UL and USBR standards. The TAC requested that Staff provide more detailed information on revisions to USBR specifications.

VII. New Business

None.

VIII. Adjournment

The meeting adjourned at 3:40 p.m.

J. F. Welch
Secretary