



A/C Pipe
Producers Association

Of importance!
Internal Correspondence

TO Executive Committee

Confidential

FROM

J.F. Welch
J. F. Welch, Vice President

DATE: June 7, 1984

SUBJECT: U.S. Environmental Protection Agency (EPA) - Consideration to Ban A/C Pipe
AACPP Options and Recommended Action Plans for SOP-01-06, Task 2

REF: JFW correspondence, U.S. Environmental Protection Agency (EPA) -
Consideration to Ban A/C Pipe, April 13, 1984

ACTION REQUIRED: Review for discussion at Executive Committee meeting, June
11, 1984.

Current Status

A. Meeting - EPA Office of Toxic Substances

On April 16, 1984, industry representatives met with officials of EPA's Office of Toxic Substances (OTS). This meeting was a follow up to the March 22, 1984 letter of AIA/NA (see reference) which notified EPA that litigation may be initiated to halt EPA from going forward with its asbestos rulemaking under the Toxic Substances Control Act (TSCA).

Counsel restated arguments made in the March 22 letter, especially the appropriateness of EPA regulating "life-cycle" asbestos exposures when the most important exposures — workplaces — are the subject of a comprehensive OSHA rulemaking. OTS' response was that the risks of manufacturing A/C pipe and other asbestos-containing products was, in spite of what action OSHA might take, unreasonable and, in their judgment, necessary to regulate. OTS staff felt that a residual lifetime cancer risk of 3 per 1,000 workers (OSHA's risk assessment) or even 1 per 1,000 exceeded risks that the Agency regulates in the pesticides program. The Office also argued that OSHA's demonstrated slowness in regulating asbestos further justified its actions under TSCA.

In spite of the steadfastness of OTS' position, there apparently are concerns within EPA about this rulemaking. These currently emanate from the Office of General Counsel and possibly at other policy-making levels.

B. AACPP Meetings with Major A/C Pipe Users

AACPP Staff recommended, and special counsel agreed, that major municipalities be asked to advise EPA of the potential adverse impacts of an A/C pipe ban. K & E's view is that 5-10 "high impact" letters from large municipalities might sensitize the Administrator.

April 24-27, Staff met with utility managers in Wichita, San Antonio, Phoenix (City Water Department and Arizona Water Company, the largest private water utility in the state), Tucson, San Diego and Los Angeles. The meetings were gratifying in many respects. First, it is clear that most of these "core customers" value A/C pipe and plan to use it as long as it is available. Second, most understand industry's predicament and are sympathetic to it. Third, most acknowledge that a ban will cause financial impacts and concerns about the safety of A/C pipe in place.

Wichita, San Antonio, Arizona Water Co., Tucson, and Los Angeles agreed to send letters to Administrator Ruckelshaus (see Enclosures 1, 2). These letters are not for external distribution and must not be used in any way to promote A/C pipe. Phoenix and San Diego would not send intervention letters because of policy relations with their City Councils.

Another meeting with East Bay Water (Oakland) was held on May 7. After some deliberation, the General Manager, Jerome B. Gilbert, sent a personal note to the EPA Administrator. For political reasons, the letter could not be made available to AACPP.

C. AACPP Meeting - EPA Office of Drinking Water

On May 25, 1984, AACPP Staff and special counsel met with Victor Kimm, Director, Office of Drinking Water (ODW). The purpose of the meeting was (a) to update ourselves on the Agency's review of comments on the need to regulate asbestos in drinking water and (b) to update Kimm on the OTS proceeding and its potential impacts on ODW. Kimm was not fully aware of the ban proceedings' status and, furthermore, had not considered the possibility that an A/C pipe ban might raise questions about the safety of A/C pipe already in place. He stated that OTS' proposed rule would be reviewed by him and other ODW policy-making officials prior to publication. Potential impacts on ODW would be assessed at that time.

The meeting was followed up by correspondence (see Enclosure 3) re-emphasizing the potentially irrational public response to a ban proposal.

D. Transmittal of Ban Proposal to Office of Management and Budget (OMB)

The notice of proposed rulemaking and regulatory impact analyses were forwarded to OMB about May 15. OMB must act on the submission within 60 days i.e. approve, reject or recommend modification/redrafting. It is not known whether OMB will oppose the rulemaking although it is aware of OSHA's forthcoming hearings and the major overlap with EPA's proposal.

E. Lobbying by Bureau of Mines and Geological Survey

Officials from the U.S. Bureau of Mines and the U.S. Geological Survey (USGS) recently met with OMB to oppose approval of the EPA proposal. This was not done at industry's prompting. Rather, it reflects these agencies concerns about the obvious redundancies between the OSHA and EPA proceedings. The meeting's impact on OMB is not known.

F. Meeting - EPA Assistant Administrator

On May 29, 1984, AIA/NA representatives (Bob Muth - ASARCO, Bob Pigg) and special counsel (Tim Hardy, Ed Warren) met with EPA Assistant Administrator Al Alm. Also present were officials from OTS (Marsha Williams, David Dull, and others), the Office of General Counsel (James Barnes), and the Office of Policy and Evaluation (Milt Russell). The mood of EPA staff was characterized as "attentive". OTS staff was not as outspoken and truculent as in the April 16 meeting.

Special counsel pointed out that the asbestos industry submitted on May 25 its testimony and documentary evidence on OSHA's proposed occupational standard for asbestos. Further, it was emphasized that AIA/NA planned full and earnest participation in the OSHA proceedings. Copies of AIA/NA comments to OSHA also were distributed. OTS was again encouraged to at least delay its proceedings until the OSHA hearings were completed.

Alm concluded the meeting without making any commitment other than giving due consideration to industry's position.

G. EPA-OSHA Memorandum of Understanding (MOU)

EPA and OSHA have agreed in principle to execute a MOU establishing areas of authorities with respect to control of substances in workplaces. The need for a MOU was prompted by EPA's recent regulatory "excursions" into the workplace, notably with asbestos, MDA and MBOCA. Drafting sessions are to begin soon, although the complexity of the issues may result in protracted deliberations. It is rumored that EPA will take no further action on asbestos, MDA and MBOCA until the MOU is executed.

The MOU may also provide a basis for OMB to oppose or delay the asbestos rulemaking. It could provide EPA with a "face-saving" rationale for abandoning the rulemaking, if it so chose.

H. House Appropriation's Committee Report

After being lobbied by USGS, the House Appropriations Committee issued on May 23, 1984 a report chastising EPA for its regulatory approach on asbestos the report states:

The committee generally supports EPA's increased emphasis on risk assessment in regulatory decisions, recognizing that some level of risk is inherent in virtually every substance and every activity. However, a marked departure from this balanced and well-reasoned approach to managing risk appears to be EPA's treatment of asbestos.

* * * * *

The Agency's recent regulatory proposal for an immediate ban on asbestos in several major uses-with a complete phase-out over ten years-also perpetuates the "one fiber can kill" perception that is an anathema to rational decision-making on managing risks. This proposal to ban all forms of asbestos would impose a huge cost on society.

* * * * *

The committee believes it is essential for EPA to reconsider its approach to asbestos regulation and directs that before taking any further regulatory action restricting asbestos uses, the Agency do the following:

- Clearly define the minerals classified as asbestos;
- Fully evaluate the British, Canadian and European studies;
- Develop mineral-specific assessments of relative health risks;
- Evaluate epidemiological studies to identify the specific risks of "white" asbestos at low environmental exposures; and
- Conduct animal studies to determine the biological activity and health risks of asbestos substitutes.

Gray & Company, special counsel to the Canadian government and the asbestos miners, is lobbying the Senate appropriation's Committee to ensure that this language remains intact.

Kirkland & Ellis - AIA/NA Strategy

At this point, the overall strategy is to continue applying as much pressure as possible on EPA—from inside the Agency and from outside.

A. EPA Assessment and Strategy

AIA/NA and special counsel may request a meeting with Administrator Ruckelshaus. Although this may or may not be granted, a meeting is not likely to result in a dramatic turn-about in the Agency's position. For that very reason another meeting is not a top priority.

The draft proposal currently is being reviewed by the various offices and Assistant Administrators within EPA. If the Office of Drinking Water, Office of General Counsel and Office of Policy and Evaluation have individual concerns about the proposal, the collective impact may prompt revisions in the regulatory plan. K&E will continue to contact these offices. AACPP will do the same with the Office of Drinking Water.

There are several reasons why EPA may not withdraw the proposal:

- (1) It is supported strongly by OTS Staff and, by all appearances, Assistant Administrator Alm.
- (2) There continue to be internal pressures to regulate substances under TSCA, although these have abated as a result of the EDB ban.
- (3) EPA is "out on a limb," i.e. there has been so much said and done on the asbestos proceeding that to abandon or significantly modify the proposal now would look like a bowing to industry pressure. This could result in political backlash prior to the Presidential election.
- (4) To the best of our knowledge, EPA is not considering a "fallback" position, i.e. any less burdensome regulation than a ban

B. OMB Assessment and Strategy

OMB is the industry's best hope for delaying or cancelling EPA's proposal because it is the agency charged with screening out costly and ineffective regulatory actions. Moreover, OMB is the arbiter on jurisdictional disputes such as the EPA-OSHA overlap on workplace regulations.

Special counsel plans to meet, as it has in the past, with OMB officials and to restate industry's position. The nearness of OSHA's hearings (June 19) and the broad scope of industry, labor and government involvement now add more impact to these arguments. AIA/NA also has provided OMB with all industry testimony/comments for OSHA's hearings, and letters submitted to EPA by municipalities (in the case of A/C pipe), foreign governments, and national asbestos associations.

OMB's reaction to EPA's regulatory package is not known, but will be determined, if possible. OMB is not reluctant to use its "muscle" on regulatory matters. Unfortunately, this has resulted in its characterization as pro-industry, almost to the extent of being a political liability to the Administration. One option available to OMB would be to oppose EPA's proposal pending execution of the OSHA-EPA memorandum of understanding.

C. Litigation Assessment and Strategy

AIA/NA's March 22 letter notified EPA that AIA/NA may initiate litigation. Industry's case would be that EPA is not authorized by TSCA to regulate occupational risks. Litigation was viewed initially as a means to prevent certain EPA officials from making public statements about the ban, and to prevent the proposal from issuing. A litigation strategy will be discussed at AIA/NA's Executive Committee meeting, June 12, 1984.

Asbestos fiber suppliers support litigation, as do some product sectors. The advantages of a suit are that it seeks redress in the courts, and shows customers that industry is committed to survival. The disadvantages are (1) that a complaint might be quickly dismissed as being without merit; this is a particularly valid concern if the suit is filed in advance of the proposal's issuance, (2) that litigation may polarize relations with EPA, a minimal concern at this juncture and (3) that dismissal of industry's complaint might be perceived by the public as endorsing the need for EPA regulation of asbestos.

D. Cabinet Council Assessment and Strategy

Two Cabinet members have expressed concern about the EPA proposal: Secretary of the Interior Clark and Secretary of Commerce Baldrige. On June 5, 1984, Malcolm Ross (USGS) briefed Interior Secretary Clark and presumably opposed the ban as he has done with OMB and the U.S. House of Representatives. Gray & Company, special counsel to the Canadian government, also will meet with Secretary Clark and provide sufficient information to make a case at the Cabinet Council. However, it is not known whether Clark is fully committed to advocating no proposal or a significantly modified proposal as that tact invites media inquiries, "leaks" from EPA staff, and potential political liabilities. Thus, the fruitfulness of these Cabinet-level contacts is uncertain.

The Canadian government will continue its broad-based lobbying program at all levels in U.S. government.

E. White House Assessment and Strategy

There currently are no plans to contact White House Staff or the President.

Provides support to EPA's notion that substitutes are readily available.

Encourages competition to use rulemaking with impunity.

Option 2: Attempt to minimize the market impacts of a ban proposal

Advantages: Industry is proactive rather than reactive

May stabilize markets against irretrievable loss of share

Combats perception of product withdrawal

Customers are provided facts by A/C pipe industry rather than misrepresentations by competitors.

Signals customers and EPA that industry will combat proposal

Disadvantages: May require reapportionment of program budgets

Staff Recommendations

Staff recommends that AACPP implement two tactics under SOP-01-06: (1) expanded municipal intervention and (2) a market communication program.

A. Municipal Intervention Tactic

Each industry salesman should be directed by their respective management to persuade 2-3 utilities to send opposition letters to the Administrator. This would result in 150-225 letters — a number that might have substantial impact on EPA's thinking about A/C pipe.

Enclosed are a "Dear Customer" letter (Enclosure 5) explaining why the industry is asking for customer assistance, and a sample letter to EPA (Enclosure 6). These will assist the salesmen and customers in understanding what needs to be done.

This tactic should start immediately.

B. Market Communications Tactic

Everyone is concerned about how the market will react to the ban announcement. Uncertainty in the minds of industry's customers must be a major concern, so AACPP's communications strategy must dispel that uncertainty.

First, customers (municipalities, specifying engineers, contractors) should know about the ban proposal and industry's position on the proposal well in advance of EPA's announcements to media. This will minimize the elements of surprise and uncertainty. (Media coverage usually precedes such announcements by as much as a week or more,

sometimes immediately after OMB approval.) While there is no reason to release any announcements now, there is every reason to prepare for eventuality.

Staff recommends the following:

- (1) Staff preparation of an industry letter advising customers that EPA will propose an A/C pipe ban and industry's intentions with respect to the ban.
- (2) Definition of letter recipients e.g. municipalities, consulting engineers, distributors, contractors, public health officials, others.
- (3) Resolution of how the letters should be distributed -- by member companies or by AACPP. Staff recommends that AACPP coordinate the preparation of computerized mailing lists and distribution of letters signed by industry officials.
- (4) Press releases to trade publications at such time as the letters are distributed.
- (5) Assessment of the desirability/feasibility of an 800 "hot-line" number to answer customer questions about the proposal.
- (6) Continuing the customer communications letters throughout the rulemaking process. This would keep customers clearly advised about the rulemaking's progress and what the A/C pipe industry is doing to oppose it.
- (7) Participation of Staff in the programs of AWWA's Intermountain, Rocky Mountain, Texas-Southwest, and California-Nevada sectional meetings.

Preparation of mailing lists and the industry letter should start immediately in case the proposal issues in July.

If you have any questions, please do not hesitate to call.

JFW/bwm

Enclosures

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