A/C Pipe Producers Association

ADVISORY

PLAINTIFF'S EXHIBIT

CAP-392

AN OPEN LETTER TO CUSTOMERS

Dear Customer:

As you may be aware, the October 4, 1983 issue of Wall Street Journal reported that the U.S. Environmental Protection Agency (EPA) is considering a ban on the use of A/C pipe. We, the manufacturers of A/C pipe in the United States and Canada — CAPCO Pipe Co., Inc., CertainTeed Corporation, J-M Manufacturing Co., Inc. and Atlas-Turner, Inc. — are publishing this advisory to give you the facts and industry's position on this announcement.

The Situation

EPA recently notified the A/C Pipe Producers Association that under the authority of the Toxic Substances Control Act it plans to publish in the next year a proposed rule banning certain asbestos products. Categories under consideration for a product ban are roofing and flooring felts, asbestos felt-backed vinyl flooring, vinyl-asbestos floor tile and A/C pipe and fittings.

The Toxic Substances Control Act (TSCA)

TSCA is a far-reaching law. It authorizes EPA to obtain data on production and health effects of chemicals and mixtures. It may require manufacturers to test potentially harmful chemicals before marketing them. And if warranted, it empowers EPA to regulate the manufacture and distribution in commerce of chemical substances. One section of TSCA provides that any person may petition EPA to start a proceeding to require testing or regulation of chemicals and mixtures.

Before EPA may impose **any** regulatory requirements under TSCA, it must show that the manufacture and use of a substance or product, A/C pipe for example, presents an "unreasonable risk or injury to health or the environment." That burden can be upheld **only** if supported by substantial evidence and **only** after considering a wide range of risk and benefit factors. Finally, EPA must use the least burdensome requirements to regulate "unreasonable risks."

What It All Means

This recent action reopens a TSCA rulemaking started in 1979 when EPA published an Advance Notice of Proposed Rulemaking on Commercial and Industrial Use of Asbestos Fibers (Federal Register, pg. 60061, October 17, 1979; as amended by Federal Register, pg. 73127, December 17, 1979; EPA Docket No. OTS-61005).

An advance notice is the first step in the regulatory process. It describes EPA's concerns about an issue, discusses generally how it will be studied, defines regulatory options and invites comments on questions raised in the notice. An advance notice is followed by a proposed rule, wherein EPA presents scientific, technical and economic data supporting its proposal. There is a comment period and a public hearing for interested parties. Then, all this input is analyzed by EPA and a final rule issued.

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The 1979 advance notice expressed concern that sources of human exposure to asbestos may present unreasonable health risks. Three regulatory options were mentioned: (1) declining limits on asbestos processing or imports, (2) bans on specific products, and (3) a ban on all but essential uses of asbestos.

EPA did not intend to include A/C pipe in its initial rulemakings in 1979. However, before the advance notice was published, a citizen petitioned EPA "to initiate a proceeding for the issuance of a rule to prohibit the manufacture and distribution of asbestos cement pipes." TSCA requires EPA to grant or deny a citizen's petition within 90 days. And since the agency was investigating asbestos-containing products anyway, the petition was granted and incorporated into the Advance Notice of Proposed Rulemaking on Commercial and Industrial Use of Asbestos Fibers. EPA cautioned, however:

> Granting a petition to initiate a proceeding to issue a rule does not mean that EPA will promulgate or even propose a rule (for A/C pipe). Such a decision will depend on the outcome of the regulatory analysis.

Why A/C Pipe Now?

We're asking the same question. One thing is clear: EPA's action is based on a **theory** that airborne occupational and environmental exposures from A/C pipe manufacture and use create an "unreasonable risk." **The potential ingestion of asbestos that may be released from A/C pipe into drinking water is not a concern in this matter.** Top officials in the Office of Toxic Substances have stated this without equivocation.

In the U.S., A/C pipe manufacturers are already regulated by a number of federal and state laws. Comparable laws exist in Canada. The Occupational Safety and Health Act (OSHA) regulates employee exposures to airborne asbestos. The Clean Air Act controls emissions to the outside air from A/C pipe plants and also imposes disposal requirements for asbestos-containing wastes. The Clean Water Act regulates effluent discharges from A/C pipe manufacturing facilities. These worker, air and water protection laws have been in place since the mid-1970's. Many, the Clean Water Act for example, require use of best available technology or "zero discharge."

In the spirit of industry-government cooperation, we not only complied with these regulations, but bettered them. A/C pipe manufacture became virtually a closed system: asbestos fiber handling and pipe machining are automated; process water and solid waste are recycled; state-of-the-art filtration systems eliminate 99.9% of asbestos in air discharges to the environment. And now, without any scientific justification, EPA theorizes that its own regulations, and those of OSHA as well, are not enough.

Industry's Position

For over a decade, the A/C pipe industry has shared EPA's interests that the manufacture and use of asbestos and A/C pipe be as safe as scientifically and economically feasible. We have labored responsibly and continuously to comply with the agency's evolving environmental regulations.

During this ten year period, the following facts formed the basis of industry's position on the safe manufacture and use of A/C pipe:

- o asbestos is unique and irreplaceable in the manufacture of A/C pipe
- o the risk, if any, from occupational exposures to asbestos have been minimized through manufacturer's compliance with OSHA standards and use of industry-recommended work practices for A/C pipe field operations
- o there is no evidence that current environmental discharges from A/C pipe plants, if they occur at all, result in unreasonable risk
- o a ban on A/C pipe is not supported by medical/scientific evidence
- o prohibiting the use of A/C pipe would adversely affect water utilities by reducing competition and increasing costs of piping materials.

These same facts are the basis of industry's position today. The A/C pipe industry cannot support and indeed, will strongly oppose EPA's newest theory that A/C pipe may present an unreasonable risk to health and the environment.

In reviewing the attached chart of pending legislative initiatives before the Congress, one should recognize that the proposals fall into two basic and distinct groups. The first group, which encompasses the Kasten bill and HR 1504, is characterized by their universal application and impact. The second group, which encompasses the remaining four proposals listed on the chart, is characterized by their more limited application and the specific program mechanism(each establishes some sort of "compensation" program) selected.

THE KASTEN BILL affects asbestos companies only indirectly. Senator Kasten's proposal is entitled the Product Liability Reform Act, and as such its objective is to bring a federal, and presumably national, flavor to the divergent state product liability laws now on the books. Asbestos companies are affected just as any other business entity, and the intent of the Kasten approach is simply to "bring order out of chaos" within a judicial framework. Given the bill's objectives, many of the information items on the chart are Not Applicable. The real benefit, if any, of the Kasten measure lies in its potential extension of a presumption of safety in cases where a product is manufactured to government specifications. It also seeks to overturn the judicial concept of strict liability in tort, by affirmatively approving the state-of-the-art defense.

HR 1504, THE GOVERNMENT CONTRACTORS' PRODUCT LIABILITY ACT, is a conceptual derivative of the Kasten measure. That is, HR 1504 seeks to correct an inequity in so far as government contractors are concerned. Under current law, injury that results from a product designed to government specifications and used by the government is compensated through workers' compensation or FECA. Government contractors making a product which results in such an injury are often third-party litigants, since the doctrine of sovereign immunity prohibits a lawsuit against the federal government without its permission. As recently re-drafted, HR 1504 would overrule the "sovereign immunity" defense available to the government, permitting government contractors to seek contribution from the government in cases where the government contributed to the injury.

S. 1643, THE ASBESTOS HEALTH HAZARDS COMPENSATION ACT, establishes a compensation program for victims of asbestos-related diseases. Sponsored by Senator Hart of Colorado, S. 1643 would require employers to pay workers' compensation benefits, supplemented by benefits to be apportioned among "responsible parties" -- asbestos product manufacturers, etc., and where appropriate including the federal government. In exchange for this program of benefits, workers would yield their rights to third-party lawsuits against employers, manufacturers, etc.

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HR 5224, also titled THE ASBESTOS HEALTH HAZARDS COMPENSATION ACT, is sponsored by Congresswoman Millicent Fenwick. Like S. 1643, the Fenwick bill is designed to establish a compensation program for asbestos disease victims. Under HR 5224, the Department of Labor would have responsibility for administering an Asbestos Trust Fund, which would be financed by tax assessments against companies that manufacture or sell asbestos-containing products and by the tobacco industry.

HR 5735, THE OCCUPATIONAL HEALTH HAZARDS COMPENSATION ACT, is designed to compensate for occupational diseases associated with asbestos and/or uranium exposure. Financed in a manner similar to the Fenwick bill, HR 5735 also contains language requiring the Secretary of Health and Human Services to recommend other occupational diseases for coverage under the Act. Sponsored by Rep. George Miller and others, this proposal contains presumptions for diseases associated with excessive exposure to asbestos, and fails to include financial participation from the federal government or the insurance industry.

THE "BELMAN" AMENDMENT refers to an amendment to the Longshore Harbor Workers' Act reform proposals. Mr. Belman represents Sun Shipyards, and his amendment calls for the apportionment of workers' compensation costs related to asbestos diseases, arising out of the shipyards, between the shipyard/employer and the federal government. The underlying philosophy behind the proposed amendment is that shipyard employment rose drastically as a result of World War II. Since the government was "responsible" for World War II, it should share in the employer's costs of that legacy, in this case asbestos-related disease. The amendment does not alter workers' compensation benefit levels, nor does it alter any party's liability with respect to an injured worker.

	Injuries Covered	Persons Eligible	Delivery Systems	Benefits Offered	Method of Financing	System Supported by	Exclusive	Med. Crit.	Mand/ Vol.
KASTEN	N/A	N/A	Courts	1. state of the art defense 2. gov't. spec. presumption	N/A	N/A	N/A	N/A	Preempts State Law
HR 1504	N/A	N/A	Courts	Gov't obligated to indemnify its contractors for product manuf'd. to gov't. spec.	Government Indemnification	N/A	N/A	N/A	New Federal Law
S 1643	Disabling Asbestos Related O.D.	All O.D. & Para-O.D. Exposures	Workers' Comp.	66 2/3%, up to 88% of pre-disability earnings or; at least 10% increase over existing awards	Last employer pays 100%, and is then reimbursed by "respon. parties" as determined by W.C. Board	Employers Manufacturers Insurers Government	Yes, in all cases	Yes, in Sec. 4 (a) 17	No, but no other action required
HR 5224	Asbestos Related Diseases	All O.D. & Para-O.D. Exposures	Labor Dept. Fund	amount equal to min. monthly level of disabled . G-S 5 ($12,880/yr).Inc. for dependents	Three Tier Tax Assessment	#1 = 2% of sales over 15 years #2 = 1% #3 = .3% tobacco	Yes	Yes, Sec.205	New Federal Law
HR 5735	Asbestos Uranium Trigger for other diseases	All Occupat. Exposures	Workers' Comp. & "Excess Liability Fund"	66 2/3% of pre-disability wage; max. not more than 200% natl. avg. wkly. wage; min. not less than 50% of same	Three Tier Tax Assessment based upon sales over 15 years, plus aspects of market share	#1 (50%) #2 (30%) employers (20%) W.C. Insurers	Yes, for payors	None; contains presumptions	Preempts State Law
BELMAN (LSHWA)	Asbestos	Shipyard W.C. Awards only	Workers' Comp. & LSHWA	No change in benefits. Helps employer only.	Apportionment formula between employer and Fed. Gov't.	Shipyards Federal Gov't.	N/A	None	New Federal Law