PLAINTIFF'S EXHIBIT
CAP-741

A/C Pipe Producers Association
Board of Directors
International Affairs Committee

Internal Correspondence

TO: H. Beasley

FROM: J. F. Welch, Vice President

DATE: November 18, 1983

SUBJECT: U.S. Occupational Safety and Health Administration (OSHA) - Emergency Temporary Standard for Asbestos

REF: (1) JFW correspondence, U.S. Occupational Safety and Health Administration (OSHA)-Exposure Standard for Asbestos, September 16, 1983
(2) JFW correspondence, U.S. Occupational Safety and Health Administration (OSHA) - Preliminary Risk Assessment for Asbestos, March 21, 1983

ACTION REQUIRED: Review for information

Current Status

On November 4, 1983, OSHA issued an emergency temporary standard (ETS) for asbestos, immediately lowering the permissible exposure limit from 2 fibers per cubic centimeter of air to 0.5 fibers per cubic centimeter (f/cc.) as an 8-hour time-weighted average. The rationale for OSHA's action is that "workers exposed to asbestos under exposure conditions existing under the current standard face a grave danger of developing incurable cancer and asbestosis." The determination that a grave danger exists is based on risk assessments previously distributed (Reference 2) or recalculated by OSHA contractors. The ETS became effective November 4, 1983 and applies to manufacturing, construction and maritime industries.

Compliance may be effected by "all practicable control methods, such as engineering controls, work practices and personal protective equipment." This is the first time that OSHA has permitted use of all control methods to comply with a standard. Although the ETS also requires the institution of training programs and the posting of signs at workplaces, both these requirements are triggered by exposures in excess of the permissible exposure limit (PEL).

The ETS will remain in effect for six months; OSHA must promulgate a permanent standard by May 3, 1984. Thus, OSHA will issue a separate notice of proposed rulemaking which will further address the issues of reducing the PEL, revising provisions on respirator selection, improving sampling and analysis and strengthening worker training requirements. The proposed rulemaking also "intends to address unique problems among exposed workers in construction, including: requirements for and frequency of medical examinations; special needs for the construction industry; the use of certified work practices; and other issues."

OSHA's current timetable is to publish the proposed rule December 6-9, 1983 and hold public hearings on or about February 8-14, 1984. According to Kirkland & Ellis, AIA/NA special counsel, the proposal will examine a number of PEL's ranging from 0.5 to 0.1 f/cc. A PEL of 0.2 f/cc. is favored by OSHA staff and supported by the agency's updated economic impact assessment.

OSHA's Medical Evidence - Ingestion of Asbestos

While most of the medical evidence presented in the ETS relates to occupational exposures via inhalation, the carcinogenicity of asbestos at sites other than the lung or mesothelium is discussed. OSHA dismisses the value of ecological epidemiologic studies on ingestion, e.g. Kanarek, Meigs, Polissar, and bases its conclusions on "well-conducted epidemiologic studies of asbestos workers ... because inhalation rather than ingestion is the primary route of workplace exposure." The agency concludes:

> In summary, at least 12 different occupational cohorts exposed to asbestos have been observed to have excesses of mortality from gastrointestinal cancer, 7 of which were statistically significant. OSHA considers that these findings constitute substantial evidence for an association between asbestos exposure and gastrointestinal cancer risk.

Toxicology studies were also reviewed:

> OSHA considers that there is some evidence that oral ingestion of asbestos is carcinogenic to laboratory animals; however, this evidence is rather inconsistent. The generalizability of the non-positive NTP (National Toxicology Program - National Institute of Environmental Heath Sciences) studies is somewhat limited by the low doses and short fibers that were administered to the animals.

And the overall evidence is summarized:

> OSHA regards the numerous epidemiologic studies indicating increased risk from gastrointestinal cancer as outweighing non-positive and equivocal findings in animals ingesting asbestos.

Although OSHA's assessment of the medical evidence on ingested asbestos is admittedly biased by its focus on occupational exposures, as opposed to environmental exposures, the U.S. Environmental Protection Agency (Office of Drinking Water) undoubtedly will use the assessment when determining the need to regulate asbestos in drinking water. EPA's concerns about gastrointestinal (GI) cancer incidence in workers was highlighted in its Advance Notice of Proposed Rulemaking for National Revised Drinking Water Regulations:

> The epidemiology data on the occurrence of gastrointestinal tract cancer among occupationally exposed persons appears to be the most relevant issue relating to risks from (asbestos) ingestion from water.

Thus, the net effect of OSHA's conclusions on ingestion will be to increase AACPP's burden in the EPA rulemaking to show that no adverse effects from ingested asbestos have been found in epidemiologic studies.

Relative Carcinogenicity of Different Fibers

Beyond stating that some scientists "generally believe that crocidolite and amosite are more carcinogenic than chrysotile and anthophyllite," OSHA gives little

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indication that it favors separate regulatory treatment for amphiboles. The ETS characterizes the evidence for risk differentials by fiber type as inconclusive for asbestosis, lung cancer and methothelioma.

The entire ETS is approximately 53 pages in length. Since a substantial portion deals with occupational health data on asbestos related diseases, only those sections immediately germain to the ETS action have been routed. Full copies of the ETS are available from AACPP upon request.

Action Plan

Immediately after the ETS was filed, Kirkland & Ellis filed a petition for judicial review of the ETS in the U.S. Court of Appeals for the Fifth Circuit (New Orleans). Filing in the Fifth Circuit assures the asbestos industry of a fair and impartial hearing of its case, as opposed to the more liberal or public-interest group oriented venue of the District of Columbia Circuit. It also assures industry that any appeals of the proposed rulemaking will also be heard in this court. To date, no petitions have been filed by adversary interests, e.g. labor unions.

Since promulgation of the ETS, AACPP has actively supported the legal counter-initiative by soliciting, through member companies, A/C pipe distributors and contractors as co-petitioners. Further, Kirkland & Ellis requested that AACPP assist in preparing an affidavit documenting the adverse impacts of the ETS on municipalities, contractors, distributors and A/C pipe manufacturers. All these activities are being conducted under SOP-01-06, OSHA-EPA Rulemakings.

Industry's request for a stay of the ETS must first be filed with OSHA. This will occur on November 16, 1983. OSHA will be given 24 hours to respond, at which time a motion for a temporary stay of the ETS, effective immediately, will be filed with the Fifth Circuit Court. Kirkland & Ellis expects the temporary stay to be granted. Oral arguments on a permanent stay could occur by December 1, 1983; a schedule for full judicial review cannot be predicted at this time.

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

JFW/ajb
Enclosure

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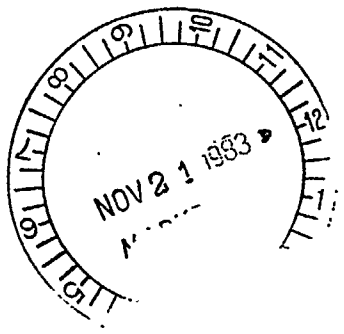
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