

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

OSHA
ASBESTOS

ELIZABETH DOLE, SECRETARY OF LABOR,)
Complainant,)
v.)
AMERICAN ASBESTOS CONTROL CO.,)
Respondent.)

OSHRC Docket
No. 88-2268

PLAINTIFF'S EXHIBIT

DOW-746

MOTION FOR LEAVE TO FILE BRIEF
AS AMICI CURIAE

Union Carbide Chemicals and Plastics Company Inc. and The
Dow Chemical Company (together the "Companies") hereby move the
Commission for leave to file a brief in this proceeding as
amici curiae on behalf of the Respondent.

This case involves the proper interpretation of OSHA's
construction industry asbestos standard, 29 C.F.R. § 1926.58.
The companies are major chemical manufacturers with facilities
throughout much of the United States. Many of those facilities
contain asbestos. From time to time the Companies engage in
asbestos removal, demolition, and renovation operations, and
are thus subject to the construction industry asbestos standard.

The interest of the Companies is limited to a single
issue: whether 29 C.F.R. § 1926.58(e)(6)(i) limits the use of
negative-pressure enclosures to situations where airborne
concentrations of asbestos exceed or can reasonably be expected
to exceed the standard's permissible limits.

ST0281026

This issue affects all employers subject to the construction industry asbestos standard. It also raises significant considerations which affect all employers. Because the Respondent in this case plans to address other issues besides this one, and thus may be unable to present a full discussion of it, the Companies request leave to supplement Respondent's brief with their own, focussed solely on that issue.

Counsel for the Secretary and for the Respondent have indicated that they have no objection to this motion.
[confirm]

Respectfully submitted,

Of Counsel:

Toby Alaska Threet
Attorney
The Dow Chemical Company

Mark N. Duvall
Health and Safety Counsel
Union Carbide Chemicals and
Plastics Company Inc.

Date: August 9, 1990

ST0281027

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

No. 88-2268

ELIZABETH DOLE, SECRETARY OF LABOR,
Complainant,
AMERICAN ASBESTOS CONTROL CO.,
Respondent.

BRIEF OF AMICI CURIAE
UNION CARBIDE CHEMICALS AND PLASTICS COMPANY INC.
AND THE DOW CHEMICAL COMPANY

Of Counsel:

Toby Alaska Threet
Attorney
THE DOW CHEMICAL COMPANY
Legal Department
2030 Willard H. Dow Center
Midland, MI 48674

Mark N. Duvall
UNION CARBIDE CHEMICALS AND
PLASTICS COMPANY INC.
39 Old Ridgebury Road, E3
Danbury, CT 06817-0001

Date: August 9, 1990

ST0281028

ELIZABETH DOLE, SECRETARY OF LABOR,)
)
 Complainant,)
)
 v.)
)
 AMERICAN ASBESTOS CONTROL CO.,)
 Respondent.)

Mark N. Duvall
Health and Safety Counsel
Union Carbide Chemicals and Plastics
Company Inc.

ST0281029

UCC AFFILIATED COMPANIES
(Subsidiary, Associated & Minority Interest Companies)

NOTE: Percent of ownership may reflect direct ownership through UCC or indirect ownership through its subsidiaries.

	<u>Place of Incorporation</u>	<u>UCC % of Ownership</u>
ACI S.p.A.	Italy	14%
ACM Services, Inc.	Texas	33.33%
Ace Polymer Co., Ltd.	Japan	10%
Administracion y Servicios Carmex, S.A. de C.V.	Mexico	48.5%
Advanced Silicon Materials Inc.	Delaware	100%
The African Manganese Company Limited	U.K.	100%
Agromore, Ltd.	India	25%
Amerchol Corporation	Delaware	100%
Amko Service Company	Ohio	100%
Andaluza De Gases S.A.	Spain	25%
Argon, S.A.	Spain	50%
Arlasa S.A.	Spain	13.49%
Australia and New Zealand Exploration Company	Delaware	100%
Beaucar Minerals, Inc.	Delaware	100%
Beaumaris Resources, Inc.	Canada	100%
Benefit Capital Management Corporation	Delaware	100%
Beralit Tin and Wolfram Limited	U.K.	25%
Beralit Tin and Wolfram (Portugal) S.A.	Portugal	20.14%
Blue Creek Coal Company, Inc.	Delaware	100%
Bridle Company Limited	Hong Kong	100%
British Acheson Electrodes Limited	U.K.	100%
Calida Gas B.V.	Netherlands	50%
Calidria Corporation	Delaware	100%
Callendar Limited	Bermuda	100%
Carbide Hashim Industrial Gases Company	Saudi Arabia	25%
Carbitalia S.p.A.	Italy	8.27%
Carbogas S.p.A.	Italy	10%
Carbographite Limited	Rep. So. Africa	50%
Carburo del Cinca S.A.	Spain	5%
Catalysts, Adsorbents and Process Systems, Inc.	Maryland	100%
Cellulosic Products, Inc.	Delaware	100%
Chemicals Marine Fleet, Inc.	Delaware	100%
Cia. Nacional de Calcareos e Derivados	Brazil	50.14%
Clark Chemical Industry Co., Ltd.	Japan	2.5%
CGT S.p.A.	Italy	4.25%
Coast Composites, Inc.	California	100%
Codim Desenvolvimento de Industrias Minerais Ltda.	Brazil	100%
Companhia Nacional de Oxigenio, Ltda.	Portugal	41.67%
Compania Navarra del Oxigeno S.A.	Spain	33.34%
Concal-Carbureto de Calcio S.A.	Brazil	50.14%
Concoat Integrated Technologies Limited	England	30%
Dexter Realty Corporation	Ohio	100%

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	<u>Place of Incorporation</u>	<u>UCC % of Ownership</u>
E G C Realty, Inc.	Minnesota	100%
Elarc - Equipamentos de Soldagem Eléctrica Ltda.	Brazil	25.58%
Electric Furnace Products Company Limited	Ontario	100%
Elektrode Maatskappy van Suid-Afrika (Eiendoms) Beperk	Rep. So. Africa	50%
Eletrometalurgica Saudade Ltda.	Brazil	50.14%
Empresa Brasileira de Reflorestamento e Agro-Pecuaria Ltda.	Brazil	45.13%
Empresa Brasileira de Cilindros Ltda.	Brazil	45.13%
Errany Limited	U.K.	100%
ESA	Italy	3.5%
Ferralloy (Glossop) Limited	England	100%
Ferrygas S.A.	Spain	25%
The Foundation for Social Justice in South Africa, Inc.	New York	*
Frao Fin	Italy	4.79%
Frao Ind	Italy	4.8%
Gacesa	Italy	2.8%
Gas Technics Gases and Equipment Centers of Eastern Pennsylvania, Inc.	Pennsylvania	100%
Gastronomia Baska	Spain	12.5%
Global Industrial Corporation	New York	100%
Greenwich Oil Corporation	Delaware	42.7%
Grupo Condumex, S.A. de C.V.	Mexico	3.5%
Hispano Sueca de Soldadura S.A.	Spain	5%
Hokuetsu Kasei (Chemical) Co., Ltd.	Japan	10%
Hokuetsu Kasei Shoji (Trading) Co., Ltd.	Japan	7.9%
IGI-Italiana Gas Industriali S.p.A.	Italy	37.5%
IGISUD Gas Industriale S.p.A.	Italy	37.5%
Incarmex, S.A. de C.V.	Mexico	48.5%
Indaver, N.V.	Belgium	0.9%
Indugas N.V.	Belgium	50%
Indugas Nederland B.V.	Netherlands	50%
D		
Industrias Carlisle, S.A.	Mexico	100%
Innovative Membrane Systems, Inc.	Delaware	100%
Integrated Technologies, Inc.	Massachusetts	100%
International Cryogenic Equipment Corporation	Delaware	100%
International Diagnostic Systems Corp.	Michigan	30%
IPPO S.p.A.	Italy	2.8%
Italiana Gas Industriali Sud S.p.A.	Italy	34%
ITGC	Italy	10%
Iwatani Industrial Gases Corporation	Japan	11.1%
Jacksonville Welding Supply, Inc.	Florida	100%
Katalistiks Brasileiros Comercio Industrial e Participacoes Ltda.	Brazil	100%
KSC Liquidating, Inc.	Delaware	100%
KTI Chemicals G.m.b.H.	Germany	100%
KTI Chemicals Limited	United Kingdom	100%
KTI Chemicals, Inc.	Delaware	100%
Kyowa Shokai Co., Ltd.	Japan	6.3%

* Non-Profit Organization

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	<u>Place of Incorporation</u>	<u>UCC % of Ownership</u>
Lincare Inc.	Connecticut	50%
Linde Comercio e Participacoes Ltda.	Brazil	100%
Linde Gases of Florida, Inc.	Florida	100%
Linde Gases of the Great Lakes, Inc.	Ohio	100%
Linde Gases of the Mid-Atlantic, Inc.	New Jersey	100%
Linde Gases of the Midwest, Inc.	Illinois	100%
Linde Gases of New England, Inc.	Connecticut	100%
Linde Gases of the Northwest, Inc.	Oregon	100%
Linde Gases of the Southeast, Inc.	North Carolina	100%
Linde Gases of the South, Inc.	Delaware	100%
Linde Gases of Southern California, Inc.	California	100%
Linde Gases of the West, Inc.	Delaware	100%
Linde Puerto Rico, Inc.	Puerto Rico	100%
London Chemical Company, Inc.	Delaware	100%
Master Marble Finishing, Inc.	California	92%
Miami Welding Supply, Inc.	Florida	50%
Mimosa Mining Company (Private) Limited	Rhodesia	100%
Minbeau (Proprietary) Limited	South Africa	100%
Mineracao Liguria Ltda.	Brazil	100%
Mineracao Sao Damaso Ltda.	Brazil	100%
Mopane Mines (Private) Limited	Rhodesia	100%
National Carbon Company Pakistan (Private) Limited	Pakistan	100%
Nepal Battery Company Limited	India	39.44%
Nippon Unicar Company Limited	Japan	50%
Nitropet, S.A.	Mexico	48.5%
Nova Tran Corporation	Wisconsin	100%
Nova Tran Limited	England	100%
Operadora Perinote, S.A. de C.V.	Mexico	48.5%
Ore Sales & Services Limited	England	100%
Orship Incorporated	Panama	100%
Osaka Hokuetsu Kasel Co., Ltd.	Japan	7.5%
Oxigenio Edy, S.A.	Brazil	50.14%
Oxigeno Del Norte, S.A.	Spain	25%
Oxigenus S.A.	Spain	21.25%
Oximesa, S.A.	Spain	21.25%
Oxisud S.p.A.	Italy	3.85%
Phoenix Research Corporation	Delaware	100%
Poly Pack	Japan	8.25%
Polysar Limited	Canada	8.75%
Prentiss Glycol Company	Delaware	100%
S.A. Rapidox Rio Comercio e Participacoes	Brazil	50.14%
Rapidox Gases Industrials Ltda.	Brazil	50.14%
RMF S.r.l.	Italy	0.96%
Rhee Beheer B.V.	Netherlands	25%
Rivoira S.p.A.	Italy	29.37%
Rivoira Sud S.p.A.	Italy	29.37%
Ruighoek Chrome Mines (Proprietary) Limited	South Africa	100%
SACI S.p.A.	Italy	1.6%
Sankyo Plastics Co., Ltd.	Japan	27.5%
Seadrift Pipeline Corporation	Delaware	100%
SEO	Italy	3%

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	<u>Place of Incorporation</u>	<u>UCC % of Ownership</u>
Servicios Administrativos Carmex, S.A. de C.V.	Mexico	48.5%
Servicios de Químicos Agrícolas, S.A.	Mexico	100%
Servicios DYC, S.A. de C.V.	Mexico	48.5%
Shakins Limited	United Kingdom	100%
SIAD Austria	Austria	10%
SIAD-Societa Italiana Acetilene e Derivate S.p.A.	Italy	10%
SMI	Italy	10%
South Charleston Sewage Treatment Company	West Virginia	100%
Tecnoproject	Italy	4%
Tenngasco Gas Gathering Company	Delaware	13.78%
Three Rivers Realty Company	Michigan	100%
TRI	Italy	6%
Tsuda Wire & Cable	Japan	1.50%
UCAR Carbon Canada Inc.	Canada	100%
UCAR Carbon Company Inc.	Delaware	100%
UCAR Carbon (Europe) S.A.	Switzerland	100%
UCAR Carbon Foreign Sales Corporation	U.S. Virgin Islands	100%
UCAR Carbon France S.A.	France	100%
UCAR Carbon Italia S.r.l.	Italy	100%
UCAR Carbon Limited	United Kingdom	100%
UCAR Carbon S.A.	Brazil	50.14%
UCAR Carbon Spain S.A.	Spain	100%
UCAR Carbon Technology Corporation	Delaware	100%
UCAR Coatings Resinas, C.A.	Ecuador	100%
UCAR Energy Services Corporation	Delaware	100%
UCAR Industrial Gases N.V.	Belgium	100%
UCAR Industrial Services B.V.	Netherlands	100%
UCAR Interam, Inc.	Delaware	100%
UCAR Limited	England	100%
UCAR Louisiana Pipeline Copany	Delaware	100%
UCAR Pipeline Incorporated	Delaware	100%
UCAR, Polimeros y Químicos C.A.	Ecuador	100%
UCAR Specialty Gases N.V.	Belgium	100%
UCAR Specialty Gases Nederland B.V.	Netherlands	100%
UCAR Vanor (Proprietary) Limited	South Africa	100%
UCFC, Inc.	Delaware	100%
U.C. Carbon Products Limited	England	100%
U.C. Investment Limited	British Virgin Islands	48.5%
Ucex (U.K.) Limited	England	100%
UCORE Limited	Delaware	100%
Umetco Minerals Corporation	Delaware	100%
Umetco Minerals Exploration Corporation	Delaware	100%
Unicarb Comercio e Participacoes Ltda.	Brazil	100%
Unicarb Industrial, S.A. de C.V.	Mexico	48.5%
Unicarb International, Inc.	British Virgin Islands	48.5%
Unicarbon Comercial Ltda.	Brazil	100%
Unigas, Inc.	New York	100%
Unigas S.p.A.	Italy	100%
Unigases Comercial Ltda.	Brazil	100%

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	<u>Place of Incorporation</u>	<u>UCC % of Ownership</u>
Union Carbide Argentina S.A.I.C.S.	Argentina	100%
Union Carbide Asia Limited	Hong Kong	100%
Union Carbide Asia Pacific, Inc.	Delaware	100%
Union Carbide Austria G.m.b.H.	Austria	100%
Union Carbide Benelux N.V.	Belgium	100%
Union Carbide do Brasil Limitada	Brazil	100%
Union Carbide Canada Limited	Canada	74.39%
Union Carbide Caribe Inc.	Delaware	100%
Union Carbide Chemicals (Australia) Pty. Ltd.	Australia	100%
Union Carbide Chemicals France S.A.	France	100%
Union Carbide Chemicals S.p.A.	Italy	100%
Union Carbide Chemicals G.m.b.H.	Germany	100%
N Union Carbide Chemicals Iberica S.A.	Spain	100%
Union Carbide Chemicals (New Zealand) Limited	Australia	100%
Union Carbide Chemicals and Plastics (Europe) S.A.	Switzerland	100%
Union Carbide Chemicals and Plastics Company Inc.	New York	100%
Union Carbide Chemicals & Plastics Technology Corporation	Delaware	100%
Union Carbide Coatings Service Corporation	Delaware	100%
Union Carbide Coatings Service (Europe) S.A.	Switzerland	100%
Union Carbide Coatings Service G.m.b.H.	Germany	98%
Union Carbide Coatings Service Ltd.	United Kingdom	100%
Union Carbide Coatings Service S.A.	France	100%
Union Carbide Coatings Service S.p.A.	Italy	100%
Union Carbide Coatings Service Technology Corporation	Delaware	100%
Union Carbide Comercial, C.A.	Venezuela	100%
Union Carbide Comercial Chile Ltda.	Chile	100%
Union Carbide Comercial Nicaragua, S.A.	Nicaragua	100%
Union Carbide Communications Company, Inc.	Delaware	100%
D Union Carbide Diagnostics Inc.	(Unknown)	100%
Union Carbide Eastern, Inc.	Delaware	100%
Union Carbide Engineering and Hydrocarbons Service Company, Inc.	Delaware	100%
Union Carbide Ethylene Oxide/Glycol Company	Delaware	100%
Union Carbide Eurofinance B.V.	Netherlands	100%
Union Carbide Finance Corporation	Delaware	100%
Union Carbide Foreign Sales Corporation	U.S. Virgin Islands	100%
Union Carbide Formosa Co., Ltd.	Taiwan	100%
Union Carbide Grafito, Inc.	New York	100%
Union Carbide Hellas Ltd.	Greece	100%
Union Carbide Iberica, S.A.	Spain	100%
Union Carbide Imaging Systems, Inc.	Delaware	100%
Union Carbide India Limited	India	50.9%
P.T. Union Carbide Indonesia	Indonesia	100%
Union Carbide Industrial Gases Asia Inc.	Delaware	100%
Union Carbide Industrial Gases (Europe) S.A.	Switzerland	100%
N Union Carbide Industrial Gases G.m.b.H.	Germany	100%
Union Carbide Industrial Gases Inc.	Delaware	100%
Union Carbide Industrial Gases K.K.	Japan	100%
Union Carbide Industrial Gases Ltd.	United Kingdom	100%
Union Carbide Industrial Gases N.V.	Belgium	100%
N Union Carbide Industrial Gases S.A.	France	100%
Union Carbide Industrial Gases S.p.A.	Italy	100%
Union Carbide Industrial Gases Technology Corporation	Delaware	100%
Union Carbide Industrial Services Company	Texas	100%

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	<u>Place of Incorporation</u>	<u>UCC % of Ownership</u>
Union Carbide Inter-America, Inc.	Delaware	100%
Union Carbide Inter-America, Inc.	New Jersey	100%
Union Carbide International Capital Corporation	New York	100%
Union Carbide International Sales Corporation	Delaware	100%
Union Carbide Japan K.K.	Japan	100%
Union Carbide Korea Limited	Rep. of Korea	100%
Union Carbide Land and Investments (Private) Limited	Zimbabwe	100%
R Union Carbide Lanka Limited	Sri Lanka	49%
Union Carbide Management Services (Private) Limited	Zimbabwe	100%
Union Carbide Marble Care, Inc.	Delaware	92%
Union Carbide Metals G.m.b.H.	Germany	100%
Union Carbide Mexicana, S.A. de C.V.	Mexico	48.5%
Union Carbide Middle East Limited	Delaware	100%
Union Carbide Navarra, S.A.	Spain	100%
Union Carbide Pakistan Limited	Pakistan	60%
Union Carbide Pan America, Inc.	Delaware	100%
Union Carbide Philippines (Far East), Inc.	Philippines	100%
Union Carbide Polyolefins Development Company, Inc.	Delaware	100%
Union Carbide Puerto Rico, Inc.	Puerto Rico	100%
Union Carbide Ranches (Private) Limited	Zimbabwe	100%
Union Carbide S.A.	Switzerland	100%
Union Carbide Services K.K.	Japan	100%
Union Carbide Services Eastern Limited	Hong Kong	100%
Union Carbide South Africa (Proprietary) Limited	South Africa	100%
Union Carbide Southern Africa (USA), Inc.	Delaware	100%
Union Carbide Subsidiary C, Inc.	Delaware	100%
Union Carbide Thailand Limited	Thailand	100%
Union Carbide Turkey, Inc.	Delaware	100%
Union Carbide U.K. Limited	U.K.	100%
Union Carbide Zimbabwe (Private) Limited	Zimbabwe	100%
Union Gas Company Limited	Rep. of So. Korea	86.15%
Union Polymers Sdn. Bhd.	Malaysia	60%
Union Technology Company, Limited	Korea	100%
UNISON Caribe Transformer Services, Inc.	Delaware	100%
UNISON Transformer Services, Inc.	Delaware	100%
United States Welding, Inc.	Colorado	50%
Vitaphore Corporation	California	100%
Wako Jushi Co., Ltd.	Japan	25%
S.A. White Martins	Brazil	50.14%
White Martins Administracao e Investimentos Ltda.	Brazil	50.14%
White Martins Comercial Ltda.	Brazil	50.14%
White Martins Gases Industriais S.A.	Brazil	50.14%
White Martins Gases Industriais do Nordeste S.A.	Brazil	50.14%
White Martins Gases Industriais do Norte S.A.	Brazil	50.14%
White Martins Productos de Carbono S.A.	Brazil	50.14%
White Martins Soldagem Ltda.	Brazil	50.14%
White Martins Trading S.A.	Brazil	50.14%
Zimbabwe Mining and Smelting Company (Private) Limited	Zimbabwe	100%

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UNION CARBIDE CANADA LIMITED SUBSIDIARIES

	<u>Place of Incorporation</u>	<u>UCC % of Ownership</u>
Acetogen Welding Supplies (1985) Ltd.	British Columbia	74.39%
Ampro Oxygen Ltd.	Quebec	74.39%
Atlantic Oxygen Ltd.	Nova Scotia	74.39%
B. C. Welding Supplies Ltd.	British Columbia	74.39%
Borstad Welding Supplies Ltd.	Canada	74.39%
Borstad Welding Supplies (1985) Ltd.	Canada	74.39%
Brouillette Oxygene Ltee	Quebec	74.39%
Brunswick Oxygen & Welding Supply Co. Ltd.	New Brunswick	74.39%
Buckwold Welding Supplies Ltd.	Manitoba	74.39%
Cane Associates Limited	Ontario	37.20%
Canadian Welding Gases Limited	Ontario	59.48%
Coastal Plastics Limited	Nova Scotia	74.39%
Commercial Alcohols Reg'd**	Canada	37.20%
Commercial Alcohols Limited	Canada	37.20%
Consumers Welders Supplies Inc.	Alberta	74.39%
CSI Carbonation Service Inc.	Ontario	74.39%
Ernest Gilbert Inc.	Quebec	74.39%
Essex Welders Supply Limited	Ontario	74.39%
Island Welding Supplies Ltd.	British Columbia	74.39%
L. & L. Equipment Ltd.	British Columbia	74.39%
Linde Marketing & Distribution Inc.	Canada	74.39%
Linde Technologies Inc.	Ontario	74.39%
M & M Supplies Ltd.	New Brunswick	74.39%
Medigas Canada Inc.	Canada	52.33%
Medigas Homecare Service Lakehead Ltd.	Ontario	37.20%
Medigas Inc.	Canada	74.39%
Medigas (New Brunswick) Limited	New Brunswick	74.39%
Medigas (P.E.I.) Ltd.	Prince Edward Island	74.39%
Medigas (Saskatchewan) Limited	Saskatchewan	74.39%
Medigas (Territories) Limited	North West Territory	74.39%
Metalwelding Supply Company Limited	Ontario	74.39%
Morgan Industries Inc.	Ontario	74.39%
Niagara Welders Supply Limited	Ontario	74.39%
North Shore Oxygen (1969) Inc.	Quebec	74.39%
Petromont Inc.	Quebec	37.20%
Richelleu Welding Supplies Ltd.	Quebec	74.39%
Rioux Oxygen Inc.	Quebec	37.20%
Rocky Mountain Welding Supplies (1985) Ltd.	British Columbia	74.39%
Saguenay Oxygene (1968) Ltee.	Quebec	37.93%
Shawinigan Pipeline Reg'd**	Canada	37.20%
Supreme Welding Supplies Limited	Ontario	74.39%
Tri-Valley Welding Products Inc.	Ontario	74.39%
Trillium Respiratory Care and Services Inc.	Ontario	70.42%
Union Carbide Performance Plastics Ltd.	Canada	74.39%
Vandry Gas & Welding Products Ltd.	Quebec	74.39%
Welders Supply Company	Ontario	37.20%
Wetmore Welding Supplies Limited	Ontario	37.20%

** Partnership

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Joint Ventures and Partnerships

<u>Name</u>	<u>Business Group/Division and/or Company</u>	<u>% of Participation</u>
AHBC Associates	BC Chesapeake Corporation (Armada/Hoffler-Greenleaf Associates L.P.)	50%
Agri-Diagnostics Associates	C&P-UC Diagnostics Inc. (Koppers Agri-Research Co.)	60%
Alestra Energy Company	Umetco-Dexter Realty (National Production Corp.)	50%
American Acetyls	C&P-Solvents & Coatings (BP Chemicals International)	50%
Baker Cummins Dermatologicals, Inc.	UCC&P-Specialty Chemicals (Baker Cummins Pharmaceuticals)	50%
DCS Capital Corporation	C&P-Prentiss Glycol Co. (Dow Chemical) (Shell Oil)	33.33%
Elocar Company	C&P-Solvents & Coatings (Swiss Polymer)	50%
Gas & Equipment Limited	UCUKL-Specialty Gases (Gas & Equipment Group)	50%
Catesby House Antiques Ltd.	U.K. (100% G&E Ltd.)	50%
Cylinder Gases Ltd.	U.K. (100% G&E Ltd.)	50%
Gas & Equipment A/S	Norway (100% G&E Ltd.)	50%
Gas & Equipment Inc., USA	USA (100% G&E Ltd.)	50%
Gas & Equipment International B.V.	Netherlands (100% G&E Ltd.)	50%
Dive Products Sdn. Bhd.	Brunei (100% G&E Int'l)	50%
Koehler Inc.	USA (100% G&E Int'l)	50%
Gas & Equipment Ltd.	Hong Kong (100% G&E Int'l)	50%
Gas & Equipment Pte. Ltd.	Singapore (100% G&E Int'l)	50%
Gas & Equipment Willemstad B.V.	Netherlands Antilles (100% G&E Ltd.)	50%
GenEx, Ltd.	UC Industrial Gases Inc.	83.5%
Genesis, Ltd.	(100% GenEx)	83.5%
Genesis Systems Group, Ltd.	(40% Genesis, Ltd.)	33.4%
Hill Equipment Company	(100% Genesis, Ltd.)	83.5%
Illini Tec Systems, Inc.	(100% Genesis, Ltd.)	83.5%
Welders Supply Company	(100% Genesis, Ltd.)	83.5%
Gopher Welding Supply Co.	Minnesota (100% GenEx)	83.5%
Gopher Medical Co., Inc.	Minnesota (100% Gopher Weld)	83.5%
N Golden Quarry	Mimosa Mining & Smelting [Falcon (U.K.)]	56%

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Joint Ventures and Partnerships
(Continued)

<u>Name</u>	<u>Business Group/Division and/or Company</u>	<u>% of Participation</u>
Hecla	Umetco	50%
Hexatech Polymers	C&P (Sekisui America Corp.)	50%
Iwatani-UCISCO Corp.	UCIG (Iwatani International Corp.)	50%
KEMET Electronics Corporation	C&P-Solvents & Coatings (General Electric Credit Corp.)	52.77%
KEMET Electronics Asia Limited	Hong Kong (100% KEMET Elec.)	52.77%
KEMET Electronics Marketing (S) Pte. Ltd.	Singapore (100% KEMET E. Asia)	52.77%
KEMET Electronics S.A.	Switzerland (100% KEMET Elec.)	52.77%
KEMET Electronics G.m.b.H.	Germany (100% KEMET E. SA)	52.77%
KEMET Electronics Limited	U.K. (100% KEMET E. SA)	52.77%
KEMET Electronics SARL	France (100% KEMET E. SA)	52.77%
KEMET International, Inc.	U.S.V.I. (100% KEMET Elec.)	52.77%
KEMET de Mexico, S.A. de C.V.	Mexico (100% KEMET Elec.)	52.77%
Keren Limited	UCC/General Services	25%
Nijet Service Company	Linde/UCAR Energy Svs. Corp. (Ingersoll-Rand)	50%
Petromont and Company Limited (Limited Partnership)	Union Carbide Canada Limited	49.95% (UCCL Ownshp)
Polypropylene Partnership (CUA/Tax Partnership)	C&P-UNIPOL Systems Dept. (Shell Oil)	50%
RC Development Associates Limited Partnership	UCC/General Services (Related Danbury Associates L.P.)	33.33%
Seadrift Polypropylene Company	C&P-UNIPOL Systems Dept. (Shell Oil)	50%
Seoul Cold Air Products Co., Ltd.	Union Gas Co., Ltd (Korea Industrial Gas) (Korea Gas Corp.) (Daesung Sanso) (Jung Woo Development)	22.37% (UGC Ownshp)

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Joint Ventures and Partnerships
(Continued)

<u>Name</u>	<u>Business Group/Division and/or Company</u>	<u>% of Participation</u>
UOP	C&P-Catalysts, Adsorbents and Process Systems, Inc. (Allied Signal Inc.)	50%
Cataleasco, Inc.	(100% UOP)	50%
Nikki-Universal Co., Ltd.	Japan (50% UOP)	25%
Shanghai UCC-UOP Molecular Sieve Co.	Shanghai (70% UOP)	35%
UOP B.V.	The Netherlands (100% UOP)	50%
UOP Equitec Service, Inc.	(100% UOP)	50%
UOP G.m.b.H.	Germany (100% UOP)	50%
UOP International Services Ltd.	United Kingdom (100% UOP)	50%
UOP K.K.	Japan (100% UOP)	50%
UOP Limited	United Kingdom (100% UOP)	50%
UOP France S.A.	France (100% UOPL)	50%
UOP S.p.A.	Italy (100% UOPL)	50%
UOP Management Services, Inc.	(100% UOP)	50%
UOP Management Services (Saudi Arabia) Ltd.	Saudi Arabia (49% UOPMSI)	24.5%
UOP N.V.	Belgium (100% UOP)	50%
UOP Processos Industriais de Brasil Ltda.	Brazil (100% UOP)	50%
UOP Spain, S.A.	Spain (100% UOP)	50%
Union Carbide Engineering & Technology Services (Africa & Middle East), Inc.	Delaware (100% UOP)	50%
UOP M.S. S.p.A.	Italy (100% UOP)	50%
Union Showa K.K.	Japan (50% UOP)	25%
Universal Oil Products Company Ltd.	(100% UOP)	50%
Umetco/H-B Limited Partnership	Umetco (Hanksville-Blanding Limited Partnership)	75%
Union Carbide-Atlas	Umetco (Atlas Corporation)	50%
Union Carbide-Rajah	Umetco (Rajah Ventures, Ltd.)	50%
Union Carbide-Taminco	Umetco (Taminco, Inc.)	50%
Union Marine Transport Co.	C&P-Solvents & Coatings (CMF) (Marine Transport Lines, Inc.)	50%
Wellnite Services	Linde (Halliburton Company)	50%
World Ethanol Company	C&P-Solvents & Coatings (Archer Daniels Midland Co.)	50%

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Associations

<u>Name</u>	<u>Business Group/Division and/or Company</u>	<u>% of Participation</u>
Union Carbide/Bechtel Association	UCC&P (Bechtel Corporation)	---

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Occupational Safety and Health Act of 1970

Section 3(8), 29 U.S.C. § 652(8)

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29 C.F.R. § 1910.1001	
29 C.F.R. § 1926.58	
29 C.F.R. § 1926.58(b)	
29 C.F.R. § 1926.58(c)	
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as [

48 Fed. Reg. 51085 (Nov. 4, 1983)	
49 Fed. Reg. 14116 (Apr. 10, 1984)	
51 Fed. Reg. 22612 (June 20, 1986)	
53 Fed. Reg. 35610 (Sept. 14, 1988)	
54 Fed. Reg. 52024 (Dec. 20, 1989)	
55 Fed. Reg. 29712 (July 20, 1990)	

MISCELLANEOUS:

Letter from Charles A. Adkins to Daniel Hoffman (Oct. 10, 1986)	
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Letter from John A. Pendergrass to
Thomas R. Kupfer (Oct. 30, 1986)
OSHA Instruction CPL 2-2.40 (Sept. 1, 1987)

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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

ELIZABETH DOLE, SECRETARY OF LABOR,	)	
	)	
Complainant,	)	
	)	
v.	)	OSHRC Docket
	)	No. 88-2268
	)	
AMERICAN ASBESTOS CONTROL CO.,	)	
Respondent.	)	
	)	
	)	

BRIEF OF AMICI CURIAE
UNION CARBIDE CHEMICALS AND PLASTICS COMPANY INC.
AND THE DOW CHEMICAL COMPANY

STATEMENT OF INTEREST

This case involves the proper interpretation of OSHA's construction industry asbestos standard. Amici Curiae Union Carbide Chemicals and Plastics Company Inc. and The Dow Chemical Company (together "amici") are major chemical manufacturers with facilities throughout much of the United States. Many of those facilities contain asbestos. From time to time amici and/or their contractors engage in asbestos removal, demolition, or renovation operations, and are thus subject to the construction industry asbestos standard. As determined by industrial hygiene monitoring, many of those operations are conducted with airborne concentrations of asbestos well below the permissible exposure limits ("PEL") of OSHA's construction industry asbestos standard, due to the use of wet methods and other techniques.

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The interest of amici in this case concerns a single issue raised, argued, and decided in the proceedings below: whether 29 C.F.R. § 1926.58(e)(6)(i) limits the use of negative-pressure enclosures to situations where airborne concentrations of asbestos exceed or reasonably can be expected to exceed the PEL prescribed in 29 C.F.R. § 1926.58(c). Amici believe that the requirement is so limited. The Secretary argued, and Judge Salyers held, that that requirement applies regardless of the potential for overexposure. Amici urge the Commission to reverse the Administrative Law Judge's decision on this point.

PROCEEDINGS BELOW

Respondent American Asbestos Control Company ("AACC") was issued several citations. The item of interest here is the citation for an alleged willful violation of 29 C.F.R. § 1926.58(e)(6)(i) stating:

29 CFR 1926.58(e)(6)(i): The employer did not establish negative pressure enclosures where feasible, before commencing removal, demolition and renovation operations: (a) On August 11, 1988, employees [sic] removed asbestos containing material from the interior of pot A at door 661 at Armco, Inc.'s Middletown Works and a negative pressure enclosure was not constructed around the removal operation.

AACC timely contested the citation.

On September 18, 1989 Judge Salyers issued a decision and order affirming this item as a serious violation and assessed a penalty of \$1,000. The decision noted that:

The Secretary does not challenge the results obtained in the air sampling performed by respondent during the removal procedures at "pot A" which reflect a range (.003 to .004 fibers per cubic centimeter) well below the PEL.

American Asbestos Control Co. ("AACC"), 1989 CCH OSHD ¶ 28,704 (No. 88-2268, 1989), slip op. at 7. But the Judge deferred to the Secretary's interpretation that 29 C.F.R. § 1926.58(e)(6)(i) requires use of negative-pressure enclosures where feasible in asbestos removal, demolition, and renovation operations, regardless of the level of airborne concentration of asbestos.

Respondent timely filed a petition for discretionary review with the Commission. Acting Chairman Arey granted the petition on October 25, 1989 with respect to four issues. The second issue stated:

Did the Judge err in concluding that the Secretary did not have the burden of proving that the Respondent's employees were working in "an area . . . where airborne concentrations of asbestos . . . exceed or can reasonably be expected to exceed the permissible exposure limit"?

SUMMARY OF ARGUMENT

The Commission has the opportunity to resolve a conflict between Administrative Law Judges concerning an important issue arising under the asbestos standard for construction: whether the Secretary must prove that it is at least reasonable to expect that airborne concentrations of asbestos will exceed the PEL before requiring employers engaging in asbestos removal, demolition, and renovation operations to implement negative-pressure enclosures and related procedures. Judge Salyers decided below that the Secretary has no obligation to prove reasonable likelihood of overexposure before requiring a