PLAINTIFF'S EXHIBIT

CAP-1047

INITIATIVE: The Recommended Work Practices Program

by
John F. Welch
Director, Public Affairs
A/C Pipe Producers Association

Barring any major substantive or legal problems with the Association's draft position paper on work practices, we find ourselves in the very favorable position of not how we're going to react or present our case to OSHA, but when we should present the case. When should this initiative be wrapped, as Coogie suggested, in a legal petition and left at Dr. Bingham's doorstep? I specifically asked him to make those recommendations because they will be the subject of important discussion, both at committee meetings and at the Board of Directors meeting.

Hopefully, history will prove the "Recommended Work Practices Program" to be one of the most far sighted and important programs upon which the A/C pipe industry ever embarked. If number of publications, for example, is any barometer of success, then "Recommended Work Practices for A/C Pipe" is clearly a winner. We have published almost 100,000 copies and distributed them to consulting engineers, contractors, water utilities, municipalities, state and federal occupational safety and health authorities, loss prevention and workmens' compensation carriers, and so on.

A day does not go by in Association headquarters when we do not receive letters requesting between one and 200 copies of the booklet for worker information and education programs. Since we discussed the program last year in San Diego, staff has been dedicating its efforts to maintaining the momentum of this effort.

Dr. Clark Cooper, who was retained to do the original industrial hygiene work gave the program, and indeed, the industry, a very big plug last year in a workshop at the New York Academy of Sciences Conference, "Contributions of Industrial Hygiene to Understanding and Preventing Asbestos-Related Disease." This was last year's big asbestos media event at Mount Sinai.

In the waterworks industry, the American Water Works Association has published its "Work Practices for Asbestos Cement Pipe" and has lent

CAPCO JEN 0023801

considerable stature, credibility, and support to the work practice program. A recent full page spread in the AWWA Journal is another good sign that AWWA, as the official spokesman for the water utility industry, is serious about the promotion of safe work practices.

It is my understanding that other sectors of the asbestos industry are getting their houses in order by conducting independent industrial hygiene surveys on their product installation and tear out operations. For example, the Resilient Floor Manufacturers Institute has retained SRI International to conduct a hygiene survey on vinyl asbestos floor tile operations. A work practice manual has been published by the Friction Materials Institute for brake lining operations, another very large sector of the industry. I would like to think that the momentum that AACPP has been able to generate in this program is spreading, and that it will have a long term positive effect on this important industry initiative.

To echo Coogie's words, the industry is entering a new and more difficult phase in promoting recommended work practices in the construction industry. That phase is translating what I call "matters of form" into "matters of substance."

The current asbestos standard has been a success in the manufacturing environment because corporations have committed dollars and installed the engineering controls, and exposure levels have been reduced. It has been stated, and correctly so, that the asbestos standard has been a total failure in the construction industry, simply because it has been ignored. Rather than attempt to comply with the present standard, the construction industry simply has ignored it. There is a potential liability here for the A/C pipe industry. If the industry is successful in getting the Occupational Safety and Health Administration to adopt a work practice standard, especially for the use of A/C pipe and construction industry, it

CAPCO JEN 0023802

can be expected that the degree of enforcement will be significant. Even if OSHA does not accept a work practice standard,which is a possibility that always exists, the fact that the Administration is aware that the use of the abrasive disc saw is a potentially dangerous operation, also makes us vulnerable to increased enforcement activity.

So, regardless of the approach we take in this exercise, the potential for more stringent enforcement of A/C pipe work practices is a very real one, and one we are going to have to come to grips with.

The situation is not unlike, by analogy, the water guidelines for A/C pipe. These guidelines appear in the AWWA and ASTM specifications, yet, there is no formal "enforcement" by AWWA, ASTM, or anyone else. That is the nature of voluntary action programs, and probably their greatest single liability. Therefore, in the water and sewer construction industry there is the very real prospect of our customers being given costly citations for what may be a ubiquitous practice, and that is the use of the abrasive disc saw. Coogie has given us an excellent recommendation on how we might be able to get this information out to contractors and help them to cope with enforcement situations.

Staff anticipated a lot of problems in this area, and in developing last year's Three Year Operational Plan, we proposed the development of a contractor's education package which would promote the acceptance and use of recommended work practices for A/C pipe. More importantly and you'll see this very shortly, the program is designed to actively discourage the use of the abrasive disc saw by appealing to the contractor's legal and moral obligations to protect the health and safety of his employees.

Without further discussion, I would like to show our "second generation" of integrated audiovisual programs. The target audience is the

CAPCO JEN 0023803

utility contractor, and the title is "Recommended Work Practices for A/C Pipe." (Audo-visual program shown)

The A/C pipe industry can ill afford to wait for the indolents and the laggards in the construction industry, or even in the asbestos industry itself. We should make every attempt, and I want to emphasize that, we have made every attempt to be a "good citizen" of the asbestos industry. But the time for citizenship is running out and the time for decisive action is fast upon us.

I, for one, and I'm sure there are a number of other people in this industry, am tired of the continual need for "knee jerk" reactions to governmental or provincial regulatory initiatives. Through a little bit of vision, a lot of perseverance, and the monetary support of the A/C pipe industry, this Association has been able to place itself in a position to postively influence the outcome of regulations which affect it.

We cannot afford and we should not let this particular moment in history pass us by; it may not ever come again. The time for the proposal of practical, cost effective regulatory alternatives has never been better. And I'm not talking about the jingoism of cost effective regulations that is so vogueish on Capitol Hill. I'm talking about a regulatory alternative which has the potential for health benefits for employees, has applicability and practicality for the regulated industry, and has the acceptance of the product suppliers to that industry.

To go back to my original theme, yes, the present is very much the future. In 1980, we will be living with the decisions which are made at this meeting. The future of the "Recommended Work Practices Program," the future regulation of A/C pipe in the construction industry,

CAPCO JEN 0023804

will be dictated solely by how well the industry itself meets and resolves the challenges that we're dealing with today. Thank you.

- Questions and Answers -

Mr. Ambler (CT): We've made a decision, as an Association, that we are going to go ahead with the position paper. We decided that. Would you care to give some estimate on how long the position paper will take for preparation and how long it will take OSHA to react to our position paper?

Mr. Welch: Well, the paper has been prepared, it has been distributed, and it will be acted on at the next Board of Directors meeting. We're at the first draft stage. I don't know if that's really a response to your question.

Mr. Ambler: It's not. Say we agree on Thursday to go ahead with the recommendation that was made today. My question is, "Is there any estimate on time as to how long it will take OSHA to react to our position paper?"

Mr. Kwon: There is an additional thing which you have to consider, and which I mentioned, and that is the rest of the construction activities being incorporated. John mentioned that other data will be forthcoming. I'm not sure what the timetable will be for incorporating all of those. However, that does not preclude initiating the petition. Rulemaking takes time, so let's say in a couple of months you put together a legal petition and submit it to the Secretary of Labor and the Construction Advisory Committee. It will take another 3 months or so before the Construction Advisory Committee can act on it. So the timetable, if you estimated it, is about a year before the final regulation will come out.

CAPCO JEN 0023805

For OSHA, there is a certain advantage for having this kind of rule-making, I'm talking the other side now.

They have been criticized so much on not having risk-benefit analyses, and that economic impacts are too big on all of the regulations that they are proposing. Now, here is a standard that they can come back and say will be helping the industry. It is possible that OSHA wouldn't even require an economic assessment, if they go along with your recommendation. However, if they deviate from it (the recommendation), then they have to do the economic assessment. You will be forcing them to do it.

Question: I have another question for Mr. Kwon. You have emphasized that the entire use of asbestos in construction must be laid out before a work practice procedure can begin. Can it not be just applied to pipe as one distinct segment of the industry, on the basis that maybe some other work practices and construction practices have not been established for other applications?

Mr. Kwon: It is possible that you can show that A/C pipe operations are unique and different from the rest of asbestos products in the construction industry. However, as I said, OSHA has to develop a policy which they can afford. But to answer your question, Section 6 of the Act does not allow setting standards based on specific products. Section 6 is the one describing all the rules and requirements of setting the standards. Standards are based on a substance, like asbestos.

One aspect of the enforcement I should mention, if you will allow me to take one minute, (and one that you will see that within a month or so) is going to be very much of a headache for all of you.

CAPCO JEN 0023806

This is only in the health area. The citation will be based on the corporation, rather than the plant. That is, if you have three or four plants doing the same thing, and Plant A received a citation on a particular x standard, and then Plant B was inspected a month later on x standard, if you are in violation, you'll be receiving repeat violations rather than first instance violations.

That means there is a potential for criminal penalty following inspections at Plant B, because if you get to Plant C and you have the same x violations, there now is a question about health. OSHA has developed this policy and it should be coming out soon. By analogy, this policy could apply to the use of abrasive disc saws in the construction industry, with contractors being cited for repeated health violations at various jobs, perhaps even in different states since this is all computanted.

Mr. Boush (JM): I think what makes me nervous, Mr. Kwon, is the fact that we have acted responsibly, as an A/C pipe industry. I'm not so certain that the other asbestos industries or asbestos-cement industries are as far along as we are, and we are a year behind, as far as I'm concerned, in trying to get work practices through OSHA. If we have to continually wait for them to catch up, we're still going to be behind.

Mr. Kwon: No. I don't say wait. You can identify those information elements from other product sectors which have to be incorporated in, even though you may not have the complete data to show them. You see, standards ultimately will be set by policy. OSHA cannot make a finite decision on a health standard because even the data is not that precise. Therefore the decision will be based on policy. If you can go in with these other

CAPCO JEN 0023807

product segments in the construction industry, you can say there would be periods where you would continue to supply additional (industrial hygiene) information.

The important thing is you postulate your policy. That's what I meant about starting now. I cannot answer whether other segments will be as responsive as your Association has been on this issue but ultimately, they must understand what is needed.

Mr. Welch: Coogie will be with us all through the day and this evening, so you will have further access to him.

As I mentioned in my presentation, we're at a very critical point in this program, and that is exactly how and when this initiative should be implemented with OSHA.

CAPCO JEN 0023808