FILE NAME: Kelly Moore (KM)

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DOCUMENT DESCRIPTION: Letter from Calidria Asbestos to Kelly Moore Paint Co. RE CPSC Ban on "Consumer Patching Compounds Containing Respirable, Free-Form Asbestos"

UNION CARBIDE

Calidria ASBESTOS

UNION CARBIDE CORPORATION · METALS DIVISION · P. O. BOX 579 · NIAGARA FALLS, N.Y. 14302 · TEL: 716-278-3376

December 22, 1977

Mr. Doug Merrill
Kelly Moore Paint Co.
909 Old County Rd.
San Carlos, CA 94070

Dear Mr. Merrill:

Because of the extensive publicity and since we have attempted to keep many of you directly informed, you should not be surprised that the Consumer Product Safety Commission has finally published their ban on "Consumer Patching Compounds Containing Respirable, Free-Form Asbestos". A copy of the Federal Register notice, dated December 15, 1977, is enclosed for your information and file.

To assist you in understanding the extent and effect of the CPSC action, we call your attention to the following items:

1. The CPSC ban covers only consumer products and does not cover industrial products or products (including consumer products) for export. For more details on the use of asbestos in industrial products, please see paragraph 2 below and on the use of asbestos in products for export, please see paragraph 3 below.

2. The ban only applies to "consumer patching compounds" which contain "intentionally added asbestos" from which "respirable free-form asbestos fibers" can become airborne under reasonably foreseeable conditions of use.

   In the ban, a "consumer" product is defined very broadly as follows:

   > 1304.1(c) "Only consumer products are subject to this regulation. Patching compounds which are consumer products include those which a consumer can purchase. Merely labeling a patching compound for industrial use would not exclude such articles from the ban. If the sale or use of the product by consumers is facilitated, it is subject to the ban. Patching compounds which are labeled as, marketed, and sold solely for industrial use in non-consumer environments are not subject to the ban. In addition to those products which can be sold directly to consumers, the ban applies to patching compounds containing respirable free-form asbestos which are used in residences, schools, hospitals, public buildings or other areas where consumers have customary access."

PLAINTIFF'S EXHIBIT 56 KM

"Intentionally added asbestos" is specified in 1304.3(f) as asbestos which is:

> "(1) added deliberately as an ingredient intended to impart specific characteristics; or, (2) contained in the final product as the result of knowingly using a raw material containing asbestos. Whenever a manufacturer finds out that the finished product contains asbestos, the manufacturer will be considered as knowingly using a raw material containing asbestos, unless the manufacturer takes steps to reduce the asbestos to the maximum extent feasible."

Banned consumer products which are mentioned specifically as containing respirable, free-form asbestos fiber include drywall spackling compounds and tape joint compounds (commonly known as joint cement or tape joint mud). The ban does not cover caulks, sealants, and similar materials which are not available in a dry form and which are not ordinarily sanded.

3. The ban shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless such consumer product is in fact distributed in commerce for use in the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this chapter shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States."

4. After January 16, 1978, the banned products cannot be manufactured or shipped from the manufacturer's facility.

5. After June 12, 1978, the banned products cannot be sold or used, regardless of the date of manufacture.

Union Carbide Corporation and others have spent considerable amounts of time, effort and money in an unsuccessful attempt to oppose or modify the CPSC action. We do not believe that the ban was justified by the evidence presented and we have presented oral and written testimony in support of our belief. A copy of our most recent letter is enclosed.

Although subsequent action may be taken, there is little possibility that the CPSC will make any beneficial changes, at least not in the near future.

We appreciate your past business and look forward to continuing to supply you with asbestos if you make compounds for industrial use or export.

Let us know if you have any questions, or if we can be of any assistance.

Very truly yours,

John L. Myers

John L. Myers
Marketing Manager

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