PLAINTIFF'S EXHIBIT

CAP-1086

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March 22, 1984

BY HAND

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Dear Dr. Moore and Mr. Barnes:

On behalf of the Asbestos Information Association/North America (AIA/NA), this letter questions the appropriateness of rulemakings to ban or put a cap on all asbestos use under the Toxic Substances Control Act (TSCA). Such proceedings would overlap and duplicate proceedings already underway at the Occupational Safety and Health Administration (OSHA) to lower worker exposures and otherwise reduce asbestos fiber emissions in product manufacture, installation and use.

Part I of this letter summarizes OSHA's ongoing efforts to reduce worker exposure to asbestos fibers. These efforts include not only sharp reductions in permissible exposures, but also increased use of work practices, respirators, and other industrial hygiene controls. In response to the same "inhalation exposure . . . typically encountered by workers [over] the 'life cycle' of asbestos products," EPA plans an outright ban on certain products and a forced phase-out of the remaining asbestos uses. Similar ban suggestions have previously been rejected by sources as diverse as the European Economic Community, the International Labor Organization, and Dr. Irving Selikoff of Mount Sinai Hospital. In any event, such EPA proceedings are premature in light of

OSHA's rulemaking addressing essentially the same worker risks. Asbestos product bans are appropriately considered by EPA, if at all, only as a last resort when OSHA cannot provide adequate worker protection.

The limits on EPA's authority under TSCA to regulate occupational risks are discussed in Part II. As we show, TSCA was designed as a "gap-filling" statute "to be administered in a manner so as not to duplicate existing regulatory and enforcement authorities." Neither TSCA Section 6 nor its legislative history anticipate that EPA would impose controls addressing occupational risks. Rather, under TSCA Section 9, EPA should defer (as it has done in analogous cases in the past) to OSHA's mandate to reduce "significant" worker risks through the imposition of all "feasible" controls.

EPA's authority to impose product bans once OSHA has exhausted the limits of its statutory authority is discussed in Part III. Even if such authority exists, it should be exercised only after discounting, in any "unreasonable risk" determination, the full extent of any risk reductions which OSHA has achieved or could achieve by exercise of its statutory authority. In the case of asbestos products, such consideration of OSHA's authority to eliminate worker risks effectively negates any basis for proposing product bans.

Asbestos-cement pipe illustrates why, in light of OSHA's ongoing exercise of its authority, no product ban need be considered. Currently, there are only approximately 500 exposed asbestos-cement pipe production workers; and they are exposed, on average, to far less than 0.5 fibers/cubic centimeter (f/cc). Further controls being considered by OSHA, including increased use of respirators, would reduce exposures still further, perhaps to 0.1 f/cc or lower averages. Even if one accepts OSHA's risk assessment (which EPA plans to use in its TSCA proceeding), the predicted residual lifetime cancer risk would be only 3 per thousand or 1.5 cases over the entire 45 year working lifetime of 500 current asbestos-cement pipe workers. Especially until a similarly rigorous examination is made of the risks posed over the "life cycle" of the more expensive competing products (*i.e.*, polyvinyl chloride pipe, iron ductile pipe), there is no basis for finding "unreasonable risk," much less that a product ban is the "least burdensome" control option under TSCA Section 6(a).

For all of these reasons, AIA/NA respectfully requests that EPA reconsider its planned TSCA proceedings and, at a miminum, postpone such proceedings until after OSHA completes its ongoing asbestos rulemaking.

I. OSHA Is Currently Acting to Reduce the Same "Life-Cycle" Worker Exposures That Give Rise to EPA's Unjustified Ban Proposal.

Unlike other candidates for Section 6 rulemakings (*e.g.*, MDA, MBOCA), asbestos has been for many years and is currently a subject of intense OSHA regulatory attention. Within one month of its creation in 1971, OSHA adopted a 12 f/cc occupational asbestos standard. On three separate occasions since 1971, OSHA has progressively lowered the asbestos permissible exposure limit. OSHA's latest action, an emergency temporary standard (ETS) issued in November 1983, would have reduced the standard to 0.5 f/cc.1/ A

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1/ 48 Fed. Reg. 51086 (November 4, 1983). OSHA's emergency standard was recently invalidated for failure to comply with the ETS requirements in Section 6(c) of the OSH Act. *Asbestos Information Association/North America v. OSHA*, No. 83-4687 (5th Cir., March 7, 1984). Although AIA/NA successfully challenged OSHA's claim that a health emergency exists, it has long encouraged OSHA not only to reconsider its current 2 f/cc standard but also to strengthen the standard to include more effective controls for downstream workers in product fabrication and installation. AIA/NA's previous activities were reviewed in letters from AIA/NA to Secretary Donovan and Assistant Secretary Auchter (Sept. 1, 1983) and to Secretary Donovan (Oct. 13, 1983).

comprehensive proposal to effect a permanent reduction of permissible exposures to 0.5 f/cc or lower is in the final stages of Labor Department and Office of Management and Budget (OMB) clearance.

OSHA's pending proposal would apply not only to factory workers, but also to downstream employees who fabricate, install and use asbestos-cement pipe and sheet, asbestos flooring, roofing and brakes, and other asbestos products. Engineering controls will almost certainly reduce average (as distinguished from permissible) exposures far below 0.5 f/cc. Wider use of respirators plus required work practices for product installation should eliminate the high peak exposures currently encountered in certain field operations. Moreover, although OSHA has yet to assert such authority for asbestos, it has previously claimed authority _de facto_ to ban products by imposing "no occupational exposure requirements" where "suitable substitutes" exist.2/

In light of OSHA's active program to reduce worker exposures and EPA's own regulation of ambient exposures under the Clean Air Act3/ (as well as other asbestos controls

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2/ _See_ OSHA Cancer Policy, 45 Fed. Reg. 5257 (January 22, 1980). OSHA's authority to ban products on the ground that "suitable substitutes" exist is one of many issues presented in pending judicial challenges to OSHA's Cancer Policy. _See American Petroleum Institute, et al. v. OSHA_, No. 80-3018 (5th Cir.).

3/ OSHA regulation of life cycle asbestos exposures has, in the past, been supplemented by EPA regulation of asbestos as a hazardous air pollutant under the Clean Air Act. In 1973, EPA issued regulations specifying methods for removing asbestos-containing materials from buildings during demolition. 38 Fed. Reg. 8820 (April 6, 1973). These regulations were broadened in 1975 to include building renovation and procedures for disposal of removed materials. 40 Fed. Reg. 48292 (Oct. 14, 1975). Further proposals to reduce ambient asbestos exposures under the Clean Air Act are currently pending. 48 Fed. Reg. 32126 (July 13, 1983).

previously enacted by EPA, CPSC, MSHA, DOT, and FDA), AIA/NA was startled in 1979 when the Carter Administration issued an advanced notice of proposed rulemaking planning to regulate commercial uses of asbestos under TSCA. 44 Fed. Reg. 60061 (Oct. 17, 1979). Following comments from AIA/NA and other members of the public, EPA recognized its need for further information on asbestos and issued a TSCA section 8(a) reporting requirement for asbestos manufacturers, importers and processors. In issuing this rule, EPA indicated it was planning to "analyze the effects" of both "regulatory [and] voluntary actions" and to examine the various Federal statutes to find the most appropriate authority to effect the necessary control." The only contemplated TSCA regulation mentioned at that time was "labelling of products." 47 Fed. Reg. 33198, 33199 (July 30, 1982).

It thus came as a complete surprise to AIA/NA last summer when the Agency suddenly announced that it was planning "to publish a proposed rule ... banning certain asbestos categories [and] ... to issue either an ANPR or a proposal which would establish a staged production cap on remaining asbestos uses."4/ Less than a month later, AIA/NA received formal notice that the product categories to be banned included approximately 50 percent of total domestic asbestos consumption, i.e., "roofing felt (both saturated and unsaturated), flooring felt, asbestos felt-backed vinyl flooring, vinyl asbestos floor tile, and asbestos cement pipe and fittings."5/

Although EPA's plans were becoming clearer, its rationale remained obscure until September 20, 1983 when Edward Klein,

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4/ Statement of Don R. Clay, Acting EPA Assistant Administrator for Pesticides and Toxic Substances, before the Subcommittee on Toxic Substances and Environmental Oversight, Senate Committee on Environment and Public Works (July 27, 1983).

5/ Letter to AIA/NA from Jack P. McCarthy, Director, TSCA Assistance Office (Aug. 18, 1983).

Director of the Chemical Control Division in the Office of Toxic Substances, addressed AIA/NA's annual meeting. Mr. Klein explained that asbestos is a proven carcinogen that should be phased out quickly and that the uses to be banned are not essential because EPA believes that substitutes exist.6/ Regarding EPA's plans to phase out asbestos entirely, Mr. Klein warned industry that "[y]ou can fill your warchests and donate money to fight the government or you can use that money to find asbestos substitutes."7/

Mr. Klein's remarks in September, as well as subsequent meetings with the EPA staff, have confirmed that the principal basis for EPA's proposed actions is the so-called "life cycle" of worker asbestos exposures. According to Mr. Klein, EPA has concluded that:

> [I]nhalation exposure to asbestos typically encountered by workers involved with the "life cycle" of asbestos products is hazardous. For example, with respect to A-C pipe, there is exposure when asbestos used to make the product is mined and milled, when the pipe is manufactured, and when the pipe is installed, maintained, and disposed.8/

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6/ Mr. Klein subsequently reiterated EPA's views in an interview with the media. See Wall Street Journal, Oct. 4, 1983.

7/ Remarks of Edward Klein, Director, Chemical Control Division, EPA Office of Toxic Substances, before AIA/NA Annual Meeting, as reported in Toxic Material News (Sept. 21, 1983).

8/ Letter of Edward A. Klein, Director, Chemical Control Division, EPA Office of Toxic Substances (Feb. 3, 1984).

By contrast, EPA makes no claim that general population exposure such as "ingestion of asbestos in drinking water is hazardous." Id. And, although making passing reference to persons living "near asbestos processing facilities," or who "simply breathe city air," EPA does not contend that product bans or phased production caps are justified except by cumulative "life cycle" worker exposures. Id.

Worldwide reaction to EPA's asbestos plans has been uniformly negative. For example, Canadian Ambassador to the United States Allan Gotlieb in a letter to Administrator Ruckelshaus stressed that "[m]y authorities believe that, provided asbestos is properly used, it is not damaging to health and therefore should not be banned."9/ Citing a lengthy review by international experts, Ambassador Gotlieb in a subsequent letter to Mr. Ruckelshaus emphasized that "in the European Community, as in Canada, experts have come to the conclusion that the banning of asbestos was neither desirable nor necessary."10/ Scientific experts, including

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9/ Letter of Canadian Ambassador Allan Gotlieb to Administrator Ruckelshaus, at 1 (Nov. 2, 1983).

10/ Letter of Canadian Ambassador Gotlieb to Administrator Ruckelshaus, at 2 (Feb. 17, 1984). Ambassador Gotlieb elaborated the same point in a December 13, 1983, speech to AIA/NA (at 10):

> Nations that make up the European Economic Community have concluded, on the basis of a lengthy review by international experts, that properly regulated and labeled asbestos used at minimal exposure levels poses no undue risk. This position has the support of the International Labor Organization. A group of experts comprised of industry, labour and government representatives developed a code of practice for the "safe use of asbestos" which is generally consistent with the approach of the EEC.

most notably Dr. Irving J. Seikoff of Mount Sinai Hospital, have reached essentially the same conclusion.11/

Moreover, suppliers and users of asbestos-cement pipe, both at home and abroad, have questioned whether it is possible to ban asbestos-cement pipe without setting off a public panic demanding removal of the many thousands of miles of pipe currently carrying much of the United States' drinking water supply.12/ Concern has also been expressed that a U.S. ban would effectively deny asbestos-cement pipe to third world nations that require cost-effective piping to supply potable water to their populations. For all of these reasons, any EPA product bans would contradict the worldwide regulatory consensus, reached after long deliberations in the European Economic Community and International Labor Organization.

II. TSCA Does Not Contemplate EPA Regulation of Worker Asbestos Exposures and, Accordingly, EPA Should Defer to OSHA's Ongoing Proceedings.

The fact that OSHA already has proceedings underway should, as a matter of simple comity, cause EPA to defer its asbestos TSCA proceedings. There is, however, another, even more compelling reason why EPA should change its course. As summarized below, the purpose, statutory language and legislative history of TSCA demonstrate that Congress never contemplated that EPA would ban or limit asbestos products based exclusively, or even primarily, on "life cycle" occupational exposures.

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11/ Proceedings of the World Symposium on Asbestos, at 77 (Montreal Canada, May 25-27, 1982) ("[I]f asbestos use is properly controlled, it need not be banned.")

12/ See Gotlieb letter, supra note 9, at 2; letters to Administrator Ruckelshaus from the South Pacific Asbestos Association (Jan. 6, 1984) and the Association Mexicana de Fabricantes de Productos de Asbesto Cemento (March 5, 1984).

TSCA was enacted in 1976 after the nation's major occupational health, consumer product, air and water pollution laws were already in effect. Both President Ford and the Act's chief sponsors emphasized that TSCA was intended to "close a gap in our current array of laws," and that it should "be adminstered in a manner so as not to duplicate existing regulatory and enforcement authorities."13/

Congress' intent that EPA give way to other regulatory authorities and use TSCA only to close gaps in current laws is evident from the text of Section 6(a), the provision upon which EPA proposes to rely in banning asbestos products. Section 6(a) provides that upon finding that "a chemical substance or mixture" presents an "unreasonable risk of injury to health or environment," EPA may by rule "apply one or more of" six alternative requirements "to the extent necessary to protect adequately against such risk using the least burdensome requirements." (emphasis added)

Significantly, none of the six listed requirements in Section 6(a) authorizes EPA to impose workplace controls or otherwise to take steps designed to reduce worker exposure to a "chemical substance or mixture." Nor can the objective of imposing "the least burdensome requirements" be achieved for occupational hazards without authority to impose worker exposure controls short of a product ban.

The legislative history of Section 6(a) demonstrates that this omission of measures designed to reduce occupational exposure was not an oversight. Thus, the House Report emphasizes that:

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13/ Address of President Ford in signing TSCA, 12 Weekly Comp. Pres. Doc. 1489 (Oct. 11, 1976) (emphasis added). See also remarks of Senator Tunney, co-sponsor of TSCA (TSCA is necessary to fill "gaps that now prevent us from protecting against human suffering and environmental damage ...."), 122 Cong. Rec. S 6601 (daily ed. March 18, 1976).

> [N]one of the authorities included in Section 6(a) should be construed as authorizing the Administrator to issue workplace standards directly regulating such matters as the airborne concentrations of a substance to which employees may be exposed or the manner in which an employee is permitted to handle a substance. There is no authority in the bill for the Administrator to issue rules respecting personal protective equipment for employees, work practices in hazardous operations, or procedures for emergency situations. Such direct regulation of the workplace falls under the jurisdiction of the Occupational Safety and Health Act of 1970, not under this bill.14/

This intent was carried forward in Section 9(c) of TSCA, which expressly exempts TSCA rules from Section 4(b)(1) of the OSH Act because such rules are not "deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health."

Congress' intent that EPA defer to the regulatory authority of OSHA and similar agencies is confirmed by Section 9 of TSCA. Section 9(d), for example, specifies that EPA should "consult and coordinate" with other Federal agencies "for the purpose of achieving the maximum enforcement of this Act while imposing the least burdens of duplicative requirements." And Section 9(a) bars EPA from "tak[ing] any action under section 6" whenever EPA has submitted a report to another agency describing "any combination of activities" which "presents or will present an

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14/ H.R. Rep. No. 94-1341, 94th Cong., 2d Sess., at 34 (1976); see the similar remarks of Congressman Murphy, one of the House conferees, 122 Cong. Rec. at H 5585 (daily ed. Oct. 1, 1976).

unreasonable risk" and that sister agency has responded by initiating a rulemaking to protect against such risk.

The legislative history of Section 9 is in keeping with Congress' intent that EPA defer to ongoing OSHA proceedings. According to the Conference Report, the purpose of Section 9 is "to assure that overlapping and duplicative regulation is avoided while attempting to provide for the greatest possible measure of protection to health and the environment."15/ Likewise, Representative Broyhill, one of the House conferees, stressed that "it was the intent of the conferees that the Toxic Substances Act not be used, when another act is sufficient to regulate a particular risk."16/ The same point is made in the House Report which notes that if another "agency initiates action under its law which is adequate to protect against [a] risk, the Administrator is precluded from taking any action under Section 6 of 7 with respect to such risk."17/

EPA has previously recognized the gap-filling role envisioned by Sections 6 and 9 of TSCA. For example, EPA denied a TSCA citizen petition seeking a ban on certain products containing alkyl nitrates because the Consumer Product Safety Commission (CPSC) had "already considered the problem" and found such a ban unnecessary. Echoing the legislative history summarized above, EPA's alkyl nitrates decision was predicated on EPA's conclusion "that a duplicative assessment of this issue would violate the intent of

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15/ Sen. Rep. No. 94-1302 (Report of the Conference), 94th Cong., 2d. Sess., at 84 (Sept. 24, 1976).

16/ 122 Cong. Rec. H33088 (daily ed. Sept. 28, 1976); accord, remarks of Represenative Skubitz, id. at H33088 ("[S]ection 9 of the conference report would require" using pre-existing regulatory authorities whenever "another act is sufficient to regulate a particular risk").

17/ H.R. Rep., supra note 13, at 46 (emphasis added).

Congress as expressed in Section 9 of TSCA."18/ Likewise, earlier this month, EPA denied a portion of a union's petition to inititate Section 6 proceedings on abatement of friable asbestos in public buildings because "there are existing and/or proposed regulations under the Clean Air Act and the Occupational Safety and Health Act to protect workers during removal of asbestos-containing materials from buildings . . .."19/

The need to defer to OSHA's ongoing asbestos rulemaking is, if anything, stronger than the case for deferring to CPSC and OSHA in these previous cases. In 1983, EPA initiated a Federal Asbestos Task Force, consisting of EPA, OSHA, CPSC and other agencies to "avoid duplication of effort," "coordinate future actions by the participating agencies," and "promote consistent actions."20/ Since that Task Force's formation, OSHA has announced its initation of a comprehensive rulemaking to reduce worker exposure risks over the entire "life cycle" of asbestos products. The Task Force's objectives, as well as the overriding purpose of Section 9, can be achieved only if EPA foregoes taking any action under

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18/ See 47 Fed Reg. 32779 (July 29, 1982). Conversely, in 1982 EPA found the need for a specific and limited regulation requiring inspection of school buildings for asbestos materials that might pose a hazard to children and teachers. In contrast to the product bans now planned by EPA, this issue fell in a "gap" between other federal statutes. EPA found that neither OSHA nor the Education Department had jurisdiction over public or parochial schools. See 45 Fed. Reg. 61966, 61967 (Sept. 17, 1980); 47 Fed. Reg. 23360 (May 27, 1982).

19/ See 49 Fed. Reg. 8459, 8454 (March 7, 1984).

20/ Charter of the Federal Asbestos Task Force, at 1.

TSCA until after OSHA's current asbestos rulemaking is completed.21/

## III. Risk-Benefit Balancing under TSCA Requires EPA to Discount Its Risk Estimates by Any Risk Reduction Measures That OSHA Might Feasibly Impose.

For the practical and legal reasons discussed in Parts I and II, EPA should reconsider and, at a minimum, postpone its planned Section 6 asbestos ban proceedings. As discussed in this Part III, deferral of such Section 6 TSCA proceedings is appropriate for yet another reason. Even if EPA possessed statutory authority to ban products based on occupational risks, exercise of that authority would require EPA to discount in its risk-benefit balancing any risk reduction measures that OSHA might feasibly impose. Unless EPA defers to OSHA's ongoing asbestos proceedings, it can only speculate about the degree to which workplace asbestos risks might be further reduced by OSHA.

No one disputes that TSCA is a risk-benefit balancing statute.22/ The expression "unreasonable risk" includes consideration not only of health effects and "the magnitude of human exposure" but also the "benefits" of the substance as well as other effects of EPA's proposed action on "the environment and public health." TSCA Section 6(c). Congress' overall purpose that EPA reduce health and environmental risks at the lowest overall social cost is further confirmed

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21/ Such coordination of Executive Department agencies is also called for by the President's Executive Order 12291, pursuant to which OMB is given "oversight" responsibility to "minimize duplication and conflict of regulations" among agencies.

22/ *See*, *e.g.*, H.R. Rep., *supra* note 13, at 35-36.

by Section 6(a)'s command that EPA employ "the least burdensome requirements" that are "necessary to protect adequately against" the risk in question.

Even if, contrary to the discussion in Part II supra, Congress envisioned that EPA might regulate occupational risks, it should do so only after discounting the extent to which such risks can be prevented or reduced by OSHA. Thus, in determining whether a substance such as asbestos "presents or will present an unreasonable risk," EPA should consider only the residual risks remaining after exercise of OSHA's broad authority to eliminate "significant" occupational risks through the imposition of all "feasible" workplace controls.23/ Moreover, in determining whether these residual occupational risks pose an "unreasonable risk," EPA would be required to compare, in any product ban proceeding, the risks to "the environment and public health" posed by substitutes for asbestos.

Unless and until OSHA has completed its ongoing asbestos rulemaking, EPA can do no more than speculate about the extent to which worker asbestos exposures can be reduced by OSHA. Based on the data assembled so far by the EPA staff, the Agency appears to lack even an up-to-date exposure base for assessing worker risks. For example, EPA uses stale, nearly ten-year-old data to estimate that there are approximately 3800 asbestos-cement pipe workers exposed to 0.5 to 12 f/cc.24/ In fact, up-to-date information shows that there are actually only about 500 asbestos-cement pipe

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23/ Industrial Union Dep't, AFL-CIO v. American Petroleum Institute, 448 U.S. 607 (1980); American Textile Mfrs. v. Donovan, 452 U.S. 490 (1981).

24/ Versar Inc., "Draft Final Report: Exposure Assessment for Asbestos," at 246-249, EPA Contract No. 68-01-6271, Task No. 49 (Jan. 9, 1984).

production workers exposed, on average, well below 0.5 f/cc.25/

Moreover, these exposures are certain to be further reduced as a result of OSHA's ongoing proceedings. Even if the permissible exposure level remains at the 0.5 f/cc level selected for the ETS, average exposures in asbestos-cement pipe operations are unlikely to exceed 0.1 f/cc. In addition, OSHA is considering wider use of respirators that could further drastically reduce worker exposures. Finally, mandatory use of work practices by downstream workers are likely to curtail the excessive peak exposures currently present in some installation operations.

No one can know until completion of the OSHA proceedings how much worker exposures might be feasibly reduced. But even assuming conservatively that average worker exposures in asbestos pipe manufacture can be reduced no further than to 0.1 f/cc on average, the residual estimated excess

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25/ See, OSHA ETS announcement, 48 Fed. Reg. at 51093 (900 workers at average exposures of 1.0 fibers/cc). These estimates were, in turn, shown to be an over-estimate. Affidavit of B. J. Pigg, ¶ 36a and accompanying affidavits cited therein, submitted in AIA/NA v. OSHA, supra note 1, (Nov. 17, 1983) (showing only five U.S. plants with current exposures averaging well below 0.5 fibers/cc).

Similarly, EPA estimates short-term exposures, ranging up to 64 f/cc, in installation of asbestos-cement pipe. Versar, supra note 23, at 246. In fact, documented studies by OSHA's contractors show maximum annual time-weighted average exposures in these operations of approximately 0.005 f/cc, provided that abrasive disc saws (whose use all manufacturers discourage and which are proscribed by the current OSHA standard) are not employed. See, Research Triangle Institute, "Draft Final Report: Phase II Regulatory Analysis of the Proposed OSHA Asbestos Standard on Asbestos," at II-39 to II-41 (August 1980) (average exposures of less than 1.0 fibers/cc for a maximum of 9.6 hours per year).

lifetime cancer risk remaining after OSHA regulation would be no greater than 3 per thousand, or 1.5 cases over the 45-year working life of the 500 current asbestos pipe workers.26/ This compares with the lifetime risk of accidental death in all industries of more than 5 per thousand and considerably higher risks above 20 per 1000 in many occupations including agriculture and mining.27/

Given the small residual occupational risk likely to remain after the conclusion of OSHA's ongoing asbestos proceedings, it is very possible that the asbestos substitutes relied on by EPA (i.e., polyvinyl chloride and iron ductile pipe) may pose greater risks than asbestos-cement pipe over their respective "life cycles." Vinyl chloride, for instance, is a proven carcinogen posing a residual estimated excess lifetime cancer risk at the current OSHA 1 ppm permissible exposure limit closely approximating the OSHA-predicted asbestos risk at 0.1 f/cc.28/ And, as EPA has

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26/ This estimate is based on OSHA's risk assessment which the Fifth Circuit recently characterized as "uncertain," "controversial," and "subject to different interpretations." AIA/NA v. OSHA, note 1 supra, slip op. at 22-23. AIA/NA has already presented expert testimony questioning OSHA's risk assessment and intends to address this issue further in the upcoming OSHA hearings. See Affidavit of Dr. Kenny S. Crump, submitted in AIA/NA v. OSHA, supra note 1 (Nov. 17, 1983).

27/ OSHA ETS Announcement, 48 Fed. Reg. at 51090.

28/ EPA's Cancer Assessment Group has conducted several assessments of risk of exposure to vinyl chloride. Assuming linearity, these estimates predict worker lifetime cancer risks at 1 ppm, the current OSHA standard, of between 2 and 7 per 1000. See EPA, "The Cancer Assessment Group's Preliminary Risk Assessment of Vinylidene Chloride" May 30, 1978); letter from CAG Chairman Roy E. Albert (Aug. 8, 1977); EPA, "Ambient Water Quality Criteria for Vinyl Chloride," at C-54 (October 1980).

previously recognized, workers in foundries manufacturing iron ductile pipe are commonly exposed to serious hazards including lead and cadmium.29/

Finally, even if the occupational life cycle for asbestos-cement pipe were found to be riskier than for competing pipe materials, the unreasonable risk criterion requires EPA to balance any such risks against the costs of such a ban. As asbestos-cement pipe is typically 10 to 50 percent less expensive than competing products, purchase of alternate piping materials would impose substantial costs on municipalities now using asbestos-cement pipe. Nationwide, the annual increased costs could easily exceed $50 million. Moreover, the elimination of asbestos-cement pipe as a competitor for polyvinyl chloride or iron ductile pipe could lead to higher pricing of these products.

In short, until further data are gathered on these and other questions, EPA is poorly situated even to speculate on what residual risks are likely to remain following completion of OSHA's ongoing rulemaking, much less to decide whether such risks are unreasonable. For the practical considerations set forth in Part I, therefore, the appropriate course is for EPA to reconsider its Section 6 ban proceedings and, at a minimum, postpone these proceedings until completion of OSHA's ongoing proceedings. The wisdom of that course is recommended not only by the questions regarding EPA's authority addressed in Part II but also

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29/ See, *e.g.*, EPA Office of Solid Waste, "Background Document, RCRA, Gray and Ductile Iron Foundries," at 316 (July 7, 1980).

because, as detailed in Part III, there may be no case for product bans or caps once OSHA's proceedings are concluded.30/

Sincerely,

Edward W. Warren, P.C.

Edward W. Warren, P.C.
Special Counsel to the
Asbestos Information Association/
North America

cc: Attorney General Smith
Deputy Solicitor of
Labor Lilly

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30/ As indicated in the letter of this date from AIA/NA Executive Director, B.J. Pigg to Administrator Ruckelshaus, AIA/NA wishes to continue its previous cooperative dialogue with the EPA staff. However, to the extent that notice under Section 20 might be viewed as a prerequisite to initiating litigation, this letter should be construed as providing such notice.