



A/C Pipe
Producers Association
Public Affairs Committee
International Affairs Committee

TO

J. F. Welch

FROM

J. F. Welch, Director, Public Affairs

PLAINTIFF'S EXHIBIT

CAP-1376

Internal Correspondence

August 18, 1981

DATE

SUBJECT

State of Connecticut - Petition for Declaratory Ruling on A/C Pipe

REF: JFW correspondence, same title, July 21, 1981.

ACTION REQUIRED: Review for information

Enclosed is correspondence submitted by special counsel requesting that the Commissioner of Health Services suspend ruling on industry's application until such time as the NIEHS study has been completed and can be reviewed and evaluated.

Also enclosed is a news article on the meeting held between special counsel, the intervenors (Connecticut Fund for the Environment) and the Commissioner.

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

JFW/ajb

Enclosure

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CAPCO JEN 0013206

Meeting on Asbestos Pipe Criticized

By STEVE GRANT
Courant Staff Writer

An environmental group complained of coziness between regulators and industry Thursday when it learned state Health Services Commissioner Douglas S. Lloyd was about to meet privately with a manufacturer interested in a pending regulatory decision by Lloyd.

The decision concerns whether to continue a state ban on the future use of asbestos-cement pipe in water supply systems.

The Connecticut Fund for the Environment, a formal participant in hearings on the industry's request to lift the ban, complained after the meeting that by law it should have been invited.

Daniel Millstone, a staff lawyer for the environmental group, was tipped off to the meeting between Lloyd and Brandon Hickey, a lawyer for pipe-makers. He arrived uninvited at Lloyd's office as the meeting was

about to begin, and Lloyd allowed him to attend.

The fact that the session had been planned as a private one demonstrated "the overcoziness of the regulated interests with an economic stake and the regulators," said Fred Krupp, another lawyer with the environment fund.

Lloyd said he had not intended to deceive the environmentalists. The meeting's sole purpose was to hear the industry's request for him to delay his decision, he said.

"This was not a hearing on the merits, nor was it an appeal of the decision," Lloyd said. "It was a question (of) whether I decide now or later."

A panel of experts recently recommended to Lloyd that he continue a ban on future use of the water pipes because it could not be proven that asbestos does not present a public health hazard. About 800 miles of the pipe are in use in 80 Connecticut municipalities.

Hickey acknowledged that he had asked Lloyd at the meeting to delay his decision until results of laboratory tests on the effects of ingesting asbestos become available. Hickey referred other questions to an industry spokesman, who was unavailable.

Lloyd, who said he had not handled invitations to the meeting, said state lawyers told him after the session that the question of the environmental group's right to attend hinges on whether it is a party to the action or an intervenor.

The environmental group said it is a party to the proceeding, and thus was entitled to attend. It cited a section of state statutes that says the state must not communicate with one side in a contested case without offering to include all other parties.

During the meeting Lloyd gave both sides two weeks to supply him with any written comments they wish to make on the request to delay his decision.

The Hartford Courant
July 31, 1981

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July 30, 1981

Douglas S. Lloyd, M.D., M.P.H.
Commissioner
Department of Health Services
79 Elm Street
Hartford, Connecticut 06115

Re: Declaratory Ruling on Asbestos-Cement Pipe

Dear Commissioner Lloyd:

We have reviewed the Hearing Panel's proposed Memorandum of Decision, which you forwarded to us on July 10, 1981.

It is our position that the facts adduced at the Hearing fully support a determination on your part that the use of asbestos cement pipe in Connecticut's water supply systems does not create a public health hazard.

It appears, however, from the proposed Memorandum of Decision that the Hearing Panel considered the results of some animal feeding studies to be "equivocal" (paragraphs 5 and 12). The Hearing Panel expressed the opinion that the preliminary results of a massive feeding study being conducted by the National Institute for Environmental Health Sciences ("NIEHS") under the sponsorship of the Environmental Protection Agency "is of no assistance to this panel since it is not published final data which has withstood peer review." (paragraph 13)

The NIEHS feeding study is the most extensive ever carried out to assess the effect of the ingestion of asbestos fibers on animals. We expect that it will receive acceptance in the scientific community as the foremost study on the subject when it is completed and subjected to peer review. As you know, the preliminary findings of this study have not shown any cause and effect relationship between the ingestion of asbestos and cancer. Moreover, the entire subject of the use of asbestos cement pipe in potable water systems, along

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Douglas S. Lloyd, M.D., M.P.H.
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with other uses of asbestos, is presently before the federal Environmental Protection Agency.

Accordingly, we request that you defer ruling on the pending application until such time as the NIEHS study has been completed and can be reviewed and evaluated. At that time we would expect to reactivate the application and either file exceptions to the proposed Memorandum of Decision or request that the matter be remanded to the Hearing Panel so that further facts may be found.

We would reserve our right, pursuant to Section 4-179, to file exceptions to the proposed Memorandum of Decision and to submit briefs and present oral argument with respect thereto until such time as we request that the application be reactivated. Of course, in the interim, the statutory moratorium on the use of asbestos cement pipe for water supply systems would remain in effect.

Should you decline to defer the matter, we request two weeks following your decision to file exceptions to the proposed Memorandum of Decision and a brief in support thereof. The hearing required by Section 4-179 could be scheduled at your convenience following submission of the exceptions and brief.

Very respectfully yours,

Applicants

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