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CEMENT ASBESTOS PRODUCTS COMPANY

Birmingham, Alabama

November 14, 1979

CM to Sean Daugherty at LHQ
Sent 12/13/79

TO: Mr. W. T. Whitley

FROM: Mr. I. L. Taylor

SUBJECT: Meeting of A/C Pipe Producers Executive Committee
November 12, 1979

Joint Meeting of ACPPA and AIA Executive Committees
November 13, 1979

Washington, D.C.

The purpose of both meetings was to chart potential courses for the two associations and member companies in responding to the Advance Notice of Proposed Rule Making (ANPRM) published by the Environmental Protection Agency (EPA) and the Consumer Product Safety Commission (CPSC). The principal input at the joint meeting was made by Mr. Ed Warren of the firm of Kirkland and Ellis (K & E) who was accompanied by two associates, Tim Hardy and Art Samson.

At the Pipe Producers Committee Meeting, it was decided that the Pipe Producers Association would cooperate to the fullest extent with the efforts of AIA through K & E, and that the ACPPA would request that Joe Jackson be invited to sit on any advisory committee created by AIA for liaison with the K & E counsel. When this suggestion was first made to the AIA Executive Committee, there was no immediate response; but finally, Tom Dougherty, AIA President, said that he thought Joe should be on call and that AIA would certainly avail themselves of his valuable input when areas involving his expertise were encountered. Andy Boush for ACPPA expressed the thought that our Association felt that, in addition to offering Joe's input, we needed him as a window for our group so that we could be aware of all initiations mounted by AIA. Mr. Dougherty polled his group, and it was agreed that Mr. Jackson would be invited to the portion of all future AIA Executive Committee meetings at which Kirkland and Ellis would be reporting on regulatory matters. The AIA Executive Committee meets monthly.

Ed Warren, in reporting for K & E, advised that he had set up a meeting that afternoon with attorneys inside of EPA to request an extension of approximately 120 days on the time allowed for reply to the advance notice. Mr. Warren emphasized that his recommendation is that we request time extensions at every juncture in the rule-making process. He says this will accomplish two things. First, it will give us the opportunity to find out as much as possible about the data base of EPA which prompted them to publish the ANPRM. At the same time, he suspects that our industry data base is incomplete and stale, and he thinks it will require a great deal of time for gathering and collation of our own material. He proposes that at the present time, we do not begin gathering data but rather assemble the team that will work with his company in analyzing EPA data and generating our own material. He visualizes this team as consisting of experts in four areas: The Medical Area (Hans Weil has accepted), Risk Analysis (the leading authority in this area is on the faculty at Louisiana Tech and appears favorably disposed to make his services available), Technical (the best authorities work for the member companies, but it was felt that a competent man outside the industry could be found), and Economic Impact (this would be someone from a firm such as A.D.L.; however, Mr. Warren indicated that A.D.L. would not be his first choice of firms). Warren set a timetable of approximately three- to four-months that it would take to get this team in place. He said that in the meantime, although he had not been retained to give advice to individual companies, if he were asked, he would suggest that no member company begin collecting nor submitting data to EPA at this point in time.

The current strategy as outlined by Mr. Warren is to maintain a dialogue with EPA and CPSC, assure the agencies that we are going to cooperate fully with them, but provide no information at this point in time. Mr. Warren said that the Toxic Substances Control Act (TSCA) provides, under its Section 8, powers for EPA to require production of information; but K & E feels that the scope of this production could be greatly limited by litigation. Due to the Freedom of Information Act, EPA will not be able to assure confidentiality of much of the information which they are currently requesting. Warren also pointed out that Section 11 of TSCA provides for subpoena powers, but he thinks it highly unlikely that this authority would be used in this rule-making process but wanted us to be aware that it could happen. Warren indicated that at the meeting with EPA yesterday, he was going to request all information in the hands of EPA which had prompted them to initiate this ANPRM; and if it was not voluntarily given, he would use the Freedom of Information Act in order to obtain the information. He said only after we know everything that EPA has should we begin seriously to develop our own data.

Some of the personal observations from the meeting were that AIA is a little concerned that the force of Joe Jackson's personality might heavily bear on the decision process as the work with K & E moves forward, and that there is some fear that the credit for the work might slip away from AIA. I also had the feeling that Mr. Warren recognized the obvious contribution that Joe Jackson and John Welch could make to him and his staff in this exercise and that he intends to use the two of them extensively.

In the joint meeting, it was expressed that there was apprehension of the possibility that OSHA might be giving consideration to issuing an Emergency Temporary Standard (ETS) of zero emission in the occupational setting. Ed Warren is aware of this and indicated that he would ask the EPA attorneys if there were any such plans in the works; and if he did not receive a satisfactory answer, he would use the Freedom of Information Act to obtain OSHA memoranda concerning considerations of an ETS. This is first priority.

The second priority is response to the EPA notice of intent to issue a water quality criteria document under the authority of the Clean Water Act. The comment period expires December 31, and Johns-Manville and Certain-Teed have already filed individual briefs in criticism of the proposed document. The primary objection they have cited is the ambiguity of the language which says that a broad interpretation could even mean sludge lagoons in a plant's closed system. The point was made that, even though the water quality criteria does not become an enforceable document per se, it sets standards which would be recommended to the states as bases for enforceable state laws.

Also at the joint meeting, members were furnished with a draft of industry position paper: "Recommending a Work Practice Standard for Regulation of Asbestos in the Construction Industry." This white paper was commissioned and funded by ACPPA and will be presented to EPA Advisory Committee for Clean Air Standards which is shared by Fred Audoboni. The purpose of promulgating recommended work practices was to short circuit EPA from requiring medical surveillance and record-keeping of workers in the construction industry. Ed Warren indicated he had read an earlier draft of the paper; and although he thought the idea was excellent, particularly coming from our industry, he was opposed to presenting the document in the present form. He took exception to the tone of the language, saying that it was didactic rather than cogent, and he felt the document highly repetitive. He did say that he felt that the necessary research to write a persuasive position paper on the subject had been assembled, and that his firm would like to be involved in the final editing. It was agreed that he should be not only involved but should have final approval privilege before the document was submitted.

The last item discussed was a decision by the A/C Pipe Producers Executive Committee that a letter be sent to CPSC requesting that A/C pipe be dropped from any further consideration by that agency on the grounds that: 1) A/C pipe is not a consumer product, and 2) A/C pipe has already been nominated for rule making by the EPA, and the action by CPSC would be a duplication of the program initiated by EPA. K & E counsel and the AIA Committee agreed that this request was reasonable and should be made.

Another personal observation is that Mr. Ed Warren of Kirkland and Ellis appears to be extremely competent and knowledgeable in matters of government regulations. He is currently representing the benzene industry, and earlier this year represented the Society for the Plastics Industry in defense of acrylanitrile copolymers used to fabricate beverage containers. I think that AIA has very wisely selected the best law firm in Washington to represent the industry.

J. L. Taylor

ILT/gj

CEMENT ASBESTOS PRODUCTS COMPANY

Birmingham, Alabama

November 15, 1979

TO: Mr. W. T. Whitley

FROM: Mr. I. L. Taylor

SUBJECT: Follow Up to Memo of November 14 Regarding ANPRM on Asbestos Products

I talked to Joe Jackson who had received a report from Tim Hardy of K & E reference the meeting between Kirkland and Ellis and EPA on November 13. Mr. Hardy reported that EPA did not seem favorably disposed to grant any extension time for submittal under the ANPRM unless specific assurances were given that identifiable information would be forthcoming during the extension period. Apparently, EPA feels that industry will contribute very little during the advance notice period and indicated that they, EPA, would probably have to use the Section Eight provision of TSCA to obtain the information from industry that they are seeking. In response to a request to reveal the data bank on which they are proceeding, the EPA spokesman replied that most of the information was published but a list of the documents would be made available to K & E. EPA further indicated that they are developing dose response curves to be used in their life cycle approach to regulation of importation of asbestos and that the first two products they expect to consider for rule making are paper and friction materials.

Since the time for response under the advance notice seems like it will expire as planned on December 15, I think that there are several questions that we need to answer:

1. Are we going to respond during the advance notice time period?

2. Are we going to do it as a company, or do we prefer to do it through the A/C Pipe Producers Association, or through AIA, or both?

3. If we are going to respond, what information do we feel would be helpful for us to develop for EPA at this point in time? We may well want to target information which we clearly do not wish to pass along because of confidentiality.

4. Should Capco file a brief by the end of December commenting on the proposed water quality criteria which was published in the Federal Register on October 1, 1979?

Since the cutoff time for submittal on the advance notice appears to remain at December 15, we need timely answers to these questions.

I. L. Taylor

ILT/gj

Copy to: Messrs. L. E. Miller
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